ANNEX A

EXECUTIVE SUMMARIES OF THE FIRST WRITTEN SUBMISSIONS BY THE PARTIES AND WRITTEN SUBMISSIONS BY THE THIRD PARTIES

ANNEX A-1

EXECUTIVE SUMMARY OF THE FIRST WRITTEN SUBMISSION BY THE UNITED STATES

(27 September 2006)

1. Simply put, this dispute is about market access. During the Uruguay Round, Turkey committed itself to permit imports of rice at a bound rate of 45 percent. Instead, Turkey has instituted a non-transparent, discretionary import licensing system to restrict and, at times, eliminate imports of rice. Specifically, since 2003, Turkey has applied a tariff-rate quota ("TRQ") for rice and has required licenses in order to import rice both at the in-quota and over-quota rates. With respect to the over-quota rate, Turkey's Ministry of Agriculture and Rural Affairs ("MARA") simply fails to issue licenses in accordance with a series of unpublished "Letters of Acceptance", in which the Minister of Agriculture agrees to "delay" the start date for the issuance of import licenses, or "Certificates of Control". **Importers who have applied for licenses often wait for months or even years for a response to their applications, and if they do receive a response, their license applications are denied with little reason (e.g., spelling errors) or denied with no reason provided at all. One importer went to court in October 2004 seeking a court order for the government to grant him an import license after his application forms were returned and ultimately denied: as of December 2005, his rice was <u>still</u> sitting in a warehouse while the litigation remained pending.**

2. With respect to the in-quota quantities, Turkey has made the receipt of licenses from the Turkish Foreign Trade Undersecretariat ("FTU") contingent upon the purchase of large quantities of domestic rice. The amount of rice that importers are required to purchase in order to import under the TRQ is contingent on three factors: (1) the type of rice to be imported (paddy, brown, or milled); (2) the source of the purchased domestic rice (the Turkish Grain Board ("TMO"), on the one hand, or Turkish producers or producer associations on the other); and (3) if purchased from Turkish paddy rice producers or producer associations, the region where the rice originates. As a result of this complicated system, the ratio of imported-to-purchased domestic rice varies greatly, depending on the interaction among the three variables, and in most cases, an importer has to purchase a <u>larger</u> quantity of domestic rice than the quantity of rice it wishes to import.

3. Because Turkey fails to issue licenses at the over-quota rate and Turkey closes the TRQ during the annual Turkish rice harvest, there is a complete ban on imports of rice during the August-October time period. Turkey relaxes and strengthens these import licensing measures at will, often with no advance written notice to importers, and frequently in contravention of what has been published in Turkey's Official Gazette. In taking these measures, Turkey has acted inconsistently with several provisions of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), *the Agreement on Import Licensing Procedures* ("Import Licensing Agreement"), the *Agreement on Agriculture* ("Agriculture Agreement"), and *the Agreement on Trade-Related Investment Measures* ("TRIMs Agreement").

4. The United States has sought to avoid dispute settlement on this issue and instead reach a mutually acceptable solution with Turkey. However, US attempts to resolve this issue have thus far been unsuccessful. Therefore, on November 2, 2005, the United States requested consultations with the Government of Turkey pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the GATT 1994, Article 6 of the Import Licensing Agreement, Article 8 of the TRIMs Agreement, and Article 19 of the Agriculture Agreement regarding Turkey's import restrictions on US rice. Pursuant to this request, the United States and Turkey held consultations on December 1, 2005. These consultations failed to reach a mutually satisfactory resolution to this dispute. On February 6, 2006, the United States requested the establishment of a panel pursuant to Article 6 of the DSU, Article 6 of the Import

Licensing Agreement, Article 8 of the TRIMs Agreement, and Article 19 of the Agriculture Agreement. The Dispute Settlement Body ("DSB") established the Panel on March 17 with standard terms of reference. Despite the ongoing Panel proceedings, the United States remains willing to reach a solution to this matter with Turkey.

5. In its first written submission, the United States advanced claims regarding (1) Turkey's denial of licenses to import rice at the over-quota rates (or Turkey's WTO bound rate of duty); (2) Turkey's TRQ regime, coupled with a domestic purchase requirement, which regulates in-quota trade; (3) Turkey's overall import licensing regime, that is, the denial of import licenses and the TRQ, acting in conjunction to restrict rice imports and distort the Turkish rice market; as well as other claims related to Turkey's import regime or restrictions on imports of rice.

US Claims Relating to Turkey's Denial of Import Licenses

6. Turkey's denial of licenses to import rice at or below the bound rate of duty is inconsistent with Article XI:1 of the GATT 1994 because it prohibits or restricts imports at the over-quota rate, and when the TRQ is closed, it acts as a complete ban on rice imports. Turkey's denial of import licenses also constitutes discretionary import licensing: under Turkish law, MARA is supposed to grant import licenses automatically but in fact it does not issue any licenses at all. In addition, the Certificate of Control is an import license for purposes of Article XI:1, because MARA requires importers to complete an application for a Certificate, and that application must be granted in order for the importation to take place. The Certificate of Control would in any event be a prohibition or restriction on importation that is made effective by an "other measure" because, as the panel in *India – Autos* found, Article XI:1 conveys "an intention to cover any type of measures restricting the entry of goods into the territory of a Member, other than those specifically excluded, namely, duties, taxes or other charges". Turkey's failure to issue Certificates of Control not only restricts the entry of rice into Turkey: in fact, it *prohibits* entry other than the in-quota quantity of the TRQ.

7. The range of measures that Members may not institute or maintain under Article XI:1 is quite broad. The provision encompasses all prohibitions or restrictions on importation other than those enumerated, regardless of whether a Member utilizes a quota, an import or export licensing regime, "or other measures" to effect the prohibition or restriction. Several panels have characterized the scope of this provision as "broad" and "comprehensive".

8. Turkey's denial of import licenses except for the in-quota quantity under the TRQ constitutes a "prohibition" on importation for purposes of Article XI:1 of the GATT 1994. A "prohibition" exists when it is legally impermissible to trade or bring in a particular good from another country. Turkey's ban on the importation of rice outside its TRQ regime is effected through MARA's denial of Certificates of Control to importers. An importer who wants to import rice outside the TRQ regime is required to obtain a Certificate of Control from MARA as a condition of importation. However, through a series of unpublished Letters of Acceptance, the Minister of Agriculture decided, starting in September 2003, that MARA would "delay" the issuance of Certificates of Control.

9. The wording of the Letters demonstrates that Turkey imposes a "prohibition" on imports of rice within the meaning of Article XI:1 as it is clear on their face that the Minister of Agriculture instructs officials in his Ministry not to issue the Certificate of Control document to importers, and without such documents, importation cannot occur (unless Turkey has re-opened its distortive TRQ). Specifically, in each Letter, the General Directorate recommends that there be a "delay" in the issuance of such Certificates over a certain period of time, and the Minister of Agriculture signs the Letter to indicate his acceptance of the recommendation. When the time period covered by a Letter is about to expire, the General Directorate issues a new Letter in which it recommends a further "delay" in the start date for issuing Certificates. Without a Certificate of Control, an importer cannot import rice into Turkey, unless Turkey has re-opened its TRQ and the importer purchases domestic rice. In

sum, Turkey, through its decision not to issue Certificates of Control, effectively prohibits all imports of rice at its WTO bound rate (the minimum market access to which it has committed). It is only when Turkey decides to re-open its distortive TRQ that imports may occur at all. During the times when that TRQ is closed – generally from August through October, a period which tracks the Turkish rice harvest – there is no mechanism to import rice into Turkey at all, a total ban on imports of rice. Minister Tuzmen confirmed that Certificates of Control were not being granted in a letter to Ambassador Portman when he stated that "the control certificate will be issued *as of April 1, 2006*".

10. This situation is not unlike that in *Turkey – Textiles*, in which the panel found that India had made out a *prima facie* case that Article XI:1 had been breached by showing that Turkey's measures, "on their face", imposed quantitative restrictions on imports. Similarly, in the instant dispute, the wording of the Letters of Acceptance is clear: the Minister of Agriculture gave a series of orders that no Certificates of Control shall be granted. Without such Certificates, no importation can occur. And that is exactly how MARA officials interpreted those documents, as evidenced by a May 1, 2006 letter from a Provincial Agriculture Directorate to a Turkish importer of US rice. The Directorate denied the importer's April 25, 2006 request for a Certificate of Control to import medium grain milled rice from the United States "since it is not possible to prepare a control certificate according to our laws and regulations".

11. Turkey's ban on the issuance of Certificates of Control, which ensured that importation of rice could not take place outside the TRQ regime, also constitutes a "restriction ... on importation" contrary to Article XI:1. The ordinary meaning of the word "restriction" is a "limitation on action, a limiting condition or regulation". The *India – Autos* panel, citing with approval this definition of "restriction" and recalling the broad reach of Article XI:1, stated that "any form of *limitation* imposed on, or in relation to importation constitutes a restriction on importation within the meaning of Article XI:1". Turkey's failure to grant Certificates of Control to importers clearly places a limitation on imports. Turkey's decision not to issue Certificates of Control also demonstrates that it maintains discretionary, or non-automatic, import licensing, through which it makes effective restrictions on importation. In *India – Quantitative Restrictions*, the panel found that two aspects of India's import licensing system constituted discretionary import licensing, because licenses were granted in some, but not in all cases, and as a result, found Article XI:1 breaches in both instances. Here, Turkey fails to grant Certificates of Control 100 per cent of the time, demonstrating that Turkey utilizes its discretion to impose restrictions on importation.

12. Because Turkey's denial of import licenses outside the TRQ is a WTO-inconsistent quantitative import restriction and also constitutes discretionary import licensing, Turkey also has breached Article 4.2 of the Agriculture Agreement. Other panels have found, in similar circumstances, that where a measure with respect to agricultural products is inconsistent with Article XI:1 of the GATT 1994, it is necessarily inconsistent with Article 4.2, which provides in footnote 1 that, *inter alia*, "quantitative import restrictions" and "discretionary import licensing" are measures that Members may not maintain, resort to, or revert to. In this dispute, the United States has demonstrated that Turkey's denial of import licenses constitutes a prohibition and restriction on importation and that, as a result, Turkey has acted inconsistently with Article XI:1. Similarly, Turkey is acting inconsistently with Article 4.2 of the Agriculture Agreement. In the Uruguay Round, Turkey committed to permit imports of rice automatically at a rate no greater than 45 per cent *ad valorem*. As previously described, MARA has refused to grant import licenses to importers. This total ban on imports outside the TRQ constitutes a quantitative import restriction. Further, Turkey's denial of import licenses also amounts to discretionary import licensing, because MARA does not grant licenses automatically. That is, the denial of licenses demonstrates that Turkey has the discretion to grant or not to grant them, and without these licenses, importation cannot occur. These are measures set out in footnote 1 to Article 4.2 as measures "of the kind" that Turkey may not maintain, resort to, or revert to.

13. Additionally, Turkey's import licensing regime for imports outside the TRQ is non-transparent. For example, Turkey does not specify a time frame within which import license applications will be approved or rejected and does not provide applicants with the reasons for rejection. Further, Turkey has failed to notify its import licensing regime for rice to the WTO, despite a US request that it do so. Its regime therefore is inconsistent with additional WTO provisions, including Articles 1.4(a) and (b) and 3.5(e) and (f) of the Import Licensing Agreement and Articles X:1 and X:2 of the GATT 1994.

US Claims Relating to Turkey's TRQ Regime Requiring Domestic Purchase

14. Turkey's imposition of a domestic purchase requirement under its TRQ regime on importers of rice into Turkey is inconsistent with Article III:4 of the GATT 1994 because the measure treats imported rice less favorably than domestic rice and adversely affects the conditions of competition for imported rice in the Turkish market. There are three elements that must be satisfied to establish that a measure is in breach of Article III:4: (1) the imported and domestic products must be "like" products; (2) the measure is a law, regulation, or requirement "affecting their internal sale, offering for sale, purchase, transportation, distribution or use"; and (3) the imported products are treated less favorably than domestic products.

15. The first prong of the Article III:4 test is whether the domestic and imported products are "like" products. In general, "like" products are products that have the same or similar properties. In examining whether products are "like" for purposes of Article III, several panels have found significant the fact that a measure distinguishes between a domestic and an imported product solely on the basis of origin. Moreover, one panel, noting that the statute at issue made a distinction between foreign and imported articles solely on the basis of origin, found that "there is no need to demonstrate the existence of actually traded like products in order to establish a violation of Article III:4". In this instance, Turkey's measures, on their face, make distinctions with respect to rice based on whether the origin of rice is foreign or domestic. The Letters of Acceptance bar the importation of foreign rice into Turkey, plainly stating that Certificates of Control will not be issued in order to protect producers of domestic rice. The domestic purchase requirement ensures that importers of foreign rice procure domestic rice as a condition upon importation. It is clear from the face of these measures that *Turkey* considers that foreign and domestic rice compete with each other; therefore, it is difficult to avoid the conclusion that at least *some* imported rice is "like" Turkish rice.

16. Even if Turkey's measures did not distinguish between foreign and imported rice on the basis of origin, US and Turkish rice also constitute "like" products with respect to a more detailed examination. The Appellate Body, which has found a "relatively broad product scope" for finding that products are "like" for purposes of Article III:4, narrowed down the non-exhaustive list of factors that might be considered in such an examination to four: tariff classification; the "properties, nature and quality" of a product; a product's end-uses; and consumer preferences. Under this test, US and Turkish rice are "like" products for purposes of Article III:4. Both products are classified under HS 1006. Turkey and the United States both produce the same two varieties of rice: medium-grain and long-grain. Their end use is the same: paddy rice and brown rice is destined for milling, and milled rice is destined for human consumption. Further, US Calrose rice is directly competitive with the Turkish Osmancik variety: in March 2005, they were selling in retail outlets in Ankara at roughly the same price.

17. The second element that must be demonstrated to prove that a Member has failed to observe its Article III:4 obligations is that a measure (1) is a law, regulation, or requirement (2) "affecting [the] internal sale, offering for sale, purchase, ... or use" of the like products at issue. The TRQ regime is comprised of several legal instruments, including decrees and notifications, that were promulgated by FTU and published in Turkey's Official Gazette. It is unclear to the United States whether Turkey's individual instruments should be characterized as "laws" or "regulations" but it is

clear that all of these instruments are legally binding under Turkish law. Regarding whether the domestic purchase requirement could be characterized as a "requirement", the *India – Autos* panel found that the term "requirement" encompassed obligations which "an enterprise voluntarily accepts in order to obtain an advantage from the government". In *US – FSC (Article 21.5 – EC)*, the panel found that a measure containing conditions that a person must satisfy to obtain an advantage from the government is a "requirement" for purposes of Article III:4. Here, Turkey imposes a "requirement" that importers purchase domestic rice as a condition of importation if they want to pay a reduced rate of duty to import rice. Thus, the domestic purchase requirement under the TRQ satisfies the "law, regulation or requirement" standard.

18. The domestic purchase requirement also clearly affects the internal sale, offering for sale, purchase, and use of the like products. The use of the word "affecting" in Article III:4 implies that a measure would not have to deal directly with the internal sale, offering for sale, purchase or use of a product, but encompasses a much broader range of potential interaction with those elements. The Appellate Body has noted that the term "affecting" should be interpreted as having a "broad scope of application". In the instant dispute, there can be no doubt that the domestic purchase requirement is "affecting" the internal sale, offering for sale, purchase, and use of rice. It provides *the only way* to import rice into Turkey. Turkey does not produce sufficient quantities of rice to meet its domestic needs so it must import, and imports comprise a substantial portion of the Turkish rice market. Without documentary proof from TMO that an importer has purchased a specific quantity of domestic rice, FTU will not grant that importer an import license to bring foreign rice into Turkey. Therefore, the domestic purchase requirement directly affects the internal sale, offering for sale, purchase, and use of rice in Turkey. Because domestic producers, unlike their foreign competitors, are not required to procure large quantities of rice from their competitors in order to sell rice in Turkey and, unlike their foreign competitors, are not limited in regard to whom they may sell their rice, the domestic purchase requirement has a seriously adverse effect on the conditions of competition between imported and domestic rice. Furthermore, only domestic rice can satisfy the purchase requirement – imported rice is excluded from eligibility.

19. The third element that must be demonstrated to prove that a Member has failed to observe its Article III:4 obligations is that a measure accords imported products less favorable treatment than like domestic products. Previous panels have found that measures are inconsistent with Article III:4 if they impose requirements on foreign products that are not imposed on domestic products; create an incentive to purchase and use domestic products or a disincentive to utilize imported products; or "adversely affect ... the equality of competitive opportunities of imported products in relation to like domestic products". Significantly, the Appellate Body in *US – FSC (Article 21.5 – EC)* noted that a measure could still be inconsistent with Article III:4 even if unfavorable treatment did not arise in every instance. On its face and by design, Turkey's TRQ regime treats imported rice less favorably than domestic rice *in every instance*. Imported rice cannot be sold in the domestic market under any circumstance unless the importer first purchases, at inflated prices, domestic rice. Domestic rice producers are not subject to the same requirement in order to bring their product to market, which provides them a tremendous advantage in the market. Further, because the domestic purchase requirement makes procuring imported rice more costly – oftentimes requiring an importer to purchase three or four times the quantity of domestic rice as the quantity of foreign rice an importer wants to import – the domestic purchase requirement creates a disincentive to purchase and import foreign rice. Consequently, by making the sourcing of imported rice less desirable, the domestic purchase requirement alters the decision-making calculus of domestic entities when making purchasing decisions regarding rice. And by making imported rice ineligible to satisfy the purchase requirement, the conditions of competition are altered in favor of domestic rice. For these reasons, Turkey's domestic purchase requirement accords less favorable treatment to imported rice and hence, Turkey has acted inconsistently with Article III:4 of the GATT 1994.

20. To the extent Turkey's domestic purchase requirement is not viewed as a "law, regulation or requirement" within the meaning of Article III, this requirement breaches Article XI:1 of the GATT 1994, because it is a "restriction ... on importation" within the meaning of Article XI:1. The domestic purchase requirement clearly falls within the scope of the phrase "whether made effective through quotas, import or export licences or other measures" because FTU will not issue an import license under the TRQ without proof of domestic purchase and the term "other measures" is broad enough to encompass a domestic purchase requirement. As noted by the *India – Autos* panel, "any form of *limitation* imposed on, or in relation to importation constitutes a restriction on importation within the meaning of Article XI:1". In this case, the domestic purchase requirement, on its face, imposes a substantial restriction on imports of rice. Importation under the TRQ cannot be realized unless an importer purchases large quantities of domestic rice and presents proof of such purchases to FTU. The TRQ regime constitutes discretionary import licensing because receiving a license to import under the TRQ is non-automatic. Rather, importation under the TRQ is conditioned on domestic purchase. Further, the Turkish regulations have not always specified the amount of rice that would need to be procured in order to receive a portion of the quota, which has rendered importers completely unable to ship at times, or at best, has left them in a state of considerable uncertainty as to how much domestic rice they would need to procure in order to bring their shipments of foreign rice into the country.

21. Another aspect of the domestic purchase requirement – the eligibility criteria – accords less favorable treatment to US rice and thus, is inconsistent with Article III:4 of the GATT 1994. Turkish regulations restrict the issuance of import licenses under the TRQ to certain categories of persons, namely (1) domestic producers who have a permit to grow paddy rice; (2) domestic producers who purchase paddy rice from Turkish producer associations of which they are members; or (3) those who procure rice from TMO, which will undoubtedly be domestic producers as well. As a result of these criteria, only domestic rice producers, principally those with milling capacity, will be eligible to import rice. This state of affairs negatively affects competitive conditions for imported rice in the Turkish marketplace. The Turkish millers primarily want to import paddy rice to send to their milling facilities, increase their milling capacity, and keep out imported milled rice which competes with Turkish milled rice and reduces the domestic price. Whereas domestic producers can sell their rice to anyone along the production chain, from the paddy producer to the ultimate consumer, US producers do not have that choice. They are not permitted to sell rice directly to consumers. Instead, they are forced to market their rice through their Turkish competitors.

22. To the extent that the eligibility criteria to purchase rice are not viewed as a "law, regulation or requirement" within the meaning of Article III, these criteria breach Article XI:1 of the GATT 1994, because they constitute a "restriction ... on importation" within the meaning of Article XI:1. The eligibility criteria for importing under the TRQ fall within the ambit of the phrase "whether made effective through quotas, import or export licences or other measures" because FTU will not issue an import license under the TRQ to a person who has not met the eligibility criteria, and the term "other measures" is broad enough in scope to encompass eligibility criteria. The eligibility criteria for purchasing domestic rice under the TRQ act as a restriction on importation because they limit the range of entities that may import rice into Turkey to certain categories of persons described above. As a result of these criteria, only domestic rice producers, principally those with milling capacity, will be eligible to import rice. Consumers would not have a permit to grow paddy rice or be members of a Turkish rice producer association, and because consumers do not have milling capacity, they would never be interested in purchasing domestic paddy rice from TMO.

23. In addition, Turkey is in breach of Article 2.1 and Paragraph 1(a) of the Annex 1 of the TRIMs Agreement because it has instituted a domestic purchase requirement, which importers must fulfill in order to obtain the advantage of importing rice at duty rates below the bound rates. To prove that a measure is inconsistent with Article 2.1, the United States must demonstrate that the domestic purchase requirement is a measure with the characteristics set forth in paragraph 1(a) of the Annex,

namely that such a measure (1) is mandatory or enforceable under domestic law or under administrative rulings, or compliance with the measure is necessary to obtain an advantage; and (2) requires the purchase or use by a company of domestic products (e.g., based on the type, volume, or value of products). Turkey's domestic purchase requirement satisfies both of these elements, and hence, is within the ambit of paragraph 1(a). Turkey requires importers to purchase domestic rice in certain specified quantities, and fulfilling (and documenting to FTU) the domestic purchase requirement is necessary to obtain an advantage, namely importing rice under the lower rates of duty under the TRQ regime.

24. Turkey's domestic purchase requirement also is inconsistent with Article 4.2 of the Agriculture Agreement because it constitutes a measure listed in footnote 1 to Article 4.2 of the kind which should have been converted into ordinary customs duties – namely, discretionary import licensing and non-tariff measures maintained through state-trading enterprises. FTU will only grant a license to import rice under the TRQ to those importers who procure large quantities of domestic rice from TMO, Turkish producers, or Turkish producer associations and who present to FTU proof of such purchase. As the issuance of licenses is not automatic but contingent on domestic purchase, Turkey's maintenance of a domestic purchase requirement to import under the TRQ constitutes discretionary import licensing. The domestic purchase requirement is also a non-tariff measure maintained through a state-trading enterprise because TMO administers the domestic purchase requirement aspect of the TRQ. An importer may only import rice under the TRQ if it purchases rice domestically, including from TMO, which sells rice at prices it announces. In addition, the importer must obtain proof of such purchase from TMO, which must be presented to FTU. If an importer does not present that documentation, FTU will not grant a license to import under the TRQ. Lastly, TMO is permitted to import 50,000 metric tons of milled rice in order to help stabilize the domestic market in the event that prices increase.

25. Turkey also has acted inconsistently with Article 3.5(h) of the Import Licensing Agreement because it administers the TRQ in such a way that the full amount of the quotas cannot be reached. Specifically, Turkey sets the domestic purchase requirement so high that the entire Turkish domestic production of rice would be purchased by importers before the in-quota amount was reached. Further, the high cost of domestic purchase makes importing under the TRQ much more expensive to the importer, who is likely a miller, than simply procuring rice domestically, and hence discourages the full utilization of the TRQ.

26. Turkey first opened the TRQ in April 2004, making it retroactive to September 1, 2003, and has closed and re-opened the TRQ several times since then. Turkey most recently opened the TRQ on November 1, 2005, while MARA was continuing to deny import licenses at the over-quota rates. This most recent opening is likewise inconsistent with the provisions of the covered agreements previously discussed.

US Claims Relating to Turkey's Import Licensing Regime As a Whole

27. Moreover, Turkey's overall import licensing regime – the TRQ, licenses for which are contingent on domestic purchase, acting in conjunction with the denial of any licenses to import at the over-quota rates – is inconsistent with Article XI:1 of the GATT 1994. Each component of Turkey's import licensing system – the TRQ regime and the denial of Certificates of Control outside that regime – is inconsistent with Article XI:1 operating independently, as previously described. In addition, the two components also give rise to a breach of Article XI:1 acting in conjunction. Turkey's denial of Certificates of Control outside the TRQ is what forces importers to utilize the TRQ: no economically rational importer would import under the TRQ given the choice, because the domestic purchase requirement is so large and therefore importing under the TRQ is so costly. As a consequence of the interaction between the two components, however, all importation of rice into Turkey takes place through the TRQ, which is a discretionary import licensing system: FTU only

grants import licenses if importers agree to purchase large quantities of domestic rice from TMO, domestic producers, or domestic producer associations. Turkey's import licensing regime for rice constitutes a serious market access restriction under Article XI:1, but it also frequently amounts to a prohibition on imports. Turkey has completely banned imports of rice outside the TRQ by denying the issuance of import licenses. Consequently, when Turkey temporarily closes the TRQ each year during the Turkish rice harvest, there is a total ban on imports of rice into Turkey. This "seasonal ban" was in place during the domestic rice harvest in 2003, 2004, and 2005. Moreover, Turkey ensures that the full amount of the quotas cannot be reached by setting the domestic purchase requirement so high that the entire Turkish domestic production of rice would be purchased by importers before the in-quota amount was reached.

28. Turkey's import licensing regime also constitutes a breach of Article 4.2 of the Agriculture Agreement. The United States already has established that both aspects of Turkey's import licensing regime are inconsistent with Article 4.2 of the Agriculture Agreement: the domestic purchase requirements under the TRQ constitute discretionary import licensing and non-tariff measures maintained through state-trading enterprises, which are measures set forth in footnote 1 to Article 4.2; and Turkey's denial of Certificates of Control outside the TRQ constitutes a quantitative import restriction and discretionary import licensing, which also are measures set forth in footnote 1. Furthermore, the United States previously demonstrated that Turkey's import licensing regime as a whole is inconsistent with GATT Article XI:1's ban regarding prohibitions or restrictions on importation. Because Article 4.2 of the Agriculture Agreement prohibits Members from employing quantitative import restrictions and discretionary import licensing in place of ordinary customs duties, the two measures operating in conjunction are necessarily in breach of Article 4.2.

29. Turkey's import licensing regime is also inconsistent with Articles 3.5(a), 5.1, 5.2(a), (b), (c), (d), (e), (g), and (h), 5.3, and 5.4 of the Import Licensing Agreement because Turkey has not provided information concerning the issuance of Certificates of Control at the over-quota rates of duty and the number of Certificates that had been granted over the last year, nor has it notified its non-automatic import licensing regime for rice to the WTO Import Licensing Committee.

30. For the reasons set out above, the United States respectfully requests the Panel to find that Turkey's import licensing regime for rice, including the most recent opening of the TRQ, is inconsistent with Articles III:4, X:1, X:2, and XI:1 of the GATT 1994; Article 4.2 of the Agriculture Agreement; Articles 1.4(a) and (b), 3.5(a), (e), (f), and (h), 5.1, 5.2(a), (b), (c), (d), (e), (g), and (h), 5.3, and 5.4 of the Import Licensing Agreement; and Article 2.1 and paragraph 1(a) of Annex 1 of the TRIMs Agreement, and recommend that Turkey bring its measures into conformity with its WTO obligations.

ANNEX A-2

**EXECUTIVE SUMMARY OF THE
FIRST WRITTEN SUBMISSION BY TURKEY**
(18 October 2006)

Introduction

1. This dispute relates to a number of laws and procedures regulating the importation of rice into Turkey. In particular, the United States claims that Turkey's regime for rice importation results in a restriction of market access which is inconsistent with a number of provisions under the GATT 1994, the Agreement on Agriculture, the Agreement on Import Licensing Procedures, and the Agreement on Trade-Related Investment Measures. Turkey categorically rejects all the allegations made by the United States and maintains that it is in full compliance with its obligations under the WTO.

2. As a result of the Uruguay Round negotiations, Turkey committed to reduce its MFN bound rate of duty applicable to rice imports to 45% *ad valorem*. However, the applied rates of duty currently levied on rice imports are, respectively, 34%, 36% and 45% *ad valorem* for paddy, brown and white rice. In addition, Turkey has offered, between 2004 and 2005, preferential rates for imports of rice within predetermined tariff rate quotas (TRQs). These annual TRQs have been opened by Decree. The TRQ system was administered on the basis of automatic import licensing procedures and certain legal requirements which were applied in a non-discriminatory, predictable and transparent fashion. The TRQ regime is no longer in force.

3. With respect to both MFN trade and (in the past) TRQ trade, rice importation occurs on the basis of compliance, by traders, with the traditional and legitimate customs formalities and legal requirements that Turkey, like all other WTO Members, applies to trade. Essentially, all that it is required for rice to be customs-cleared is that the applicable MFN rate of duty has been paid and that the specific consignment complies with the relevant Turkish requirements on, *inter alia*, food safety, fitness for use, and standards or specifications provided in technical regulations or implementing recognized international standards. In order to facilitate the process of customs clearance, traders must submit at importation a document, known as Certificate of Control, which contains all the information required for customs purposes. This document must be approved by the Ministry of Agriculture and Rural Affairs. Contrary to what is claimed by the United States, the Certificate of Control is not an import license and it is not meant to serve the traditional purposes of import licenses, both *de jure* and *de facto*. No import license has ever been applied in relation to MFN trade.

4. With respect to rice imports within the TRQ, in order to benefit from the preferential tariff rates available within the quotas, traders were required to comply, in addition to the legal requirements applicable to all rice importation (i.e., payment of applicable duties and compliance with the general customs formalities, including the submission of approved Certificates of Control), with legal requirements peculiar only to TRQ importation. In particular, they had to apply for an import license which was automatically issued if all legal requirements had been duly fulfilled. These legal requirements included a domestic purchase requirement. Turkey's automatic import licensing procedures for imports of rice within the TRQ were always administered in a non-discriminatory, transparent, predictable, and non-trade-distortive fashion which provided a considerable tariff advantage and enhanced conditions of competition to imported rice. In any event, Turkey's TRQ regime and its related import licensing procedures are no longer in force.

5. Turkey has systematically sought to avoid dispute settlement on this issue and reach a mutually acceptable solution with the United States. These efforts have been made both during the relevant WTO committees' meetings and during the dispute settlement consultations. Turkey remains

willing to address the United States' specific trade concerns, but is not willing to forego its legitimate WTO rights.

6. In its first written submission, Turkey has addressed all factual and legal issues advanced by the United States in its claims. Turkey respectfully requested the Panel to find that its measures, both in relation to MFN and TRQ trade, are not inconsistent with its WTO obligations and the covered agreements. With respect to TRQ trade, Turkey also respectfully requested the Panel not to make, in any event, any finding or recommendation as the related measures are no longer in force.

Factual Background

7. Under the Harmonized System, rice is classified under tariff item 1006. Within item 1006, rice is classified according to the three stages of its production process: rice in the husk, otherwise known as paddy or rough rice (HS 1006.10); husked rice, otherwise known as brown rice (HS 1006.20); and semi-milled or wholly-milled rice, otherwise known as white rice (HS 1006.30). Paddy, or rough, rice is rice as it is harvested from the field. It consists of kernels of rice having a portion or portions of the protective husk (or hull) remaining. Paddy rice can be milled into either brown rice or, if the milling process continues, white rice. Brown rice consists of kernels of rice where the husk has been removed, but the brown layer remains. Milled, or white, rice consists of kernels of rice where the husk and at least the outer bran layers have been removed. Turkey's bound MFN rate for rice is 45% *ad valorem*. Currently, however, the applied rates for imports of paddy, brown and white rice are, respectively, 34%, 36% and 45% *ad valorem*. In addition, Turkey has also been offering preferential rates for imports within predetermined tariff rate quotas opened by Decree between 2004 and 2005.

8. The importation into Turkey of certain goods such as processed foodstuffs, agricultural, animal and veterinary products is subject to the levying of the applicable rates of duties and to the common types of customs control and certification that all countries and WTO Members conduct when foreign products cross their borders. In Turkey, these control requirements, and the related authority for enforcement, are currently conferred, by the relevant legislation, to the Ministry of Agriculture and Rural Affairs (MARA). It is MARA which holds the competence to certify compliance of the imported goods with the applicable requirements. While most of these requirements are for trade monitoring and information purposes only, others aim at ensuring that imported products meet the legitimate standards for the protection of human health and safety, animal or plant life or health, and the environment.

9. In particular, MARA determines the "*fitness and compatibility*" of certain products with respect to human health and safety and in relation other concerns. Rice falls within the list of products which are covered by the control requirements applicable at time of importation. In essence, this means that rice importers must present a duly completed "*Certificate of Control*", which has been checked and approved by MARA, to Turkish Customs as a condition for importation. No quantitative restriction is foreseen under Turkish law and this requirement is applicable to all covered products, independently from their country of origin and the tariff rate that they benefit from when imported into Turkey. The Certificate of Control is not, nor should it be interpreted as, an import license or an instrument of allocation of imports to origins or traders.

10. The Certificate of Control is an official document through which the importer submits certain information to MARA in relation to the particular product that it wishes to import into Turkey. It is a reference document needed to process the customs clearance of any particular consignment of produce and, most importantly, to verify the product safety and fitness for use of the imported items with respect to human consumption. The Control Certificate allows customs authorities to verify, on a single document, all required customs information, including the product's compliance with relevant standards and technical regulations. The application form to be used as a Certificate of Control is

readily available free of charge to all importers and does not need to be issued by MARA. After the importer duly fills in the form and MARA approves it, it becomes an official certificate (i.e., the Certificate of Control), and can be submitted to the competent customs authorities at point of entry into the customs territory of Turkey.

11. *Inter alia*, the Certificate of Control contains information on: the tariff heading applicable to the product being imported, the description of the product or products which will be in the consignment, information on the importer (i.e., business title, address, telephone, etc.), the importer's tax registration number, information on the exporter (i.e., business title, address, telephone, etc.), the intended use of the commodity, the purpose of importation of the commodity (to be specified for live aquatic products), the quantity of the product being imported, the batch number of the commodity (only for agricultural veterinary drugs and related active substances), the country of origin of the commodity, the country in which the commodity is to be loaded for transportation to Turkey, the customs point of entry of the commodity into Turkey, information on the firm which will use the imported commodity (i.e., business title, address, telephone, etc.), and the applicable information indicating compliance of the imported commodity with the relevant Turkish technical regulations or specifications implementing recognized international standards (i.e., EC, WHO or FAO Codex) for the specific imported commodity. MARA may require additional documents and certificates to be provided when importation is sought. Some of these documents are required for all products being imported (the *pro-forma* invoice and other documents such as the nutritional specifications which may be requested by law), while others only for certain types of products. These latter documents may differ in relation to the type of product and the relevant legislation in force. However, they all establish specific information obligations and requirements to ensure that human health and safety, and animal or plant life or health are protected.

12. When all required information has been duly provided and attached to the Certificate of Control, MARA approves it and it becomes a valid document for purposes of customs control. In essence, it is only when the commodity to be imported is found to be "*proper*" (i.e., in line with all Turkish requirements for marketability, product safety and fitness for use) that MARA will approve a Certificate of Control. MARA will then have exhausted its customs certification mandate and it will simply retain later powers of market surveillance. Certificates of Control have always been systematically and regularly approved on a non-discriminatory basis both in relation to rice imports occurring at the "over-quota" MFN or applied rate level and, most importantly for purposes of the allegations by the United States, within the "in-quota" volumes established each year since 2004. In particular, from 2003 to date, Turkey has approved a total of 2,223 Certificates of Control, allowing a total importation of 2,264,857 tonnes of foreign rice (paddy, brown and milled). Of this total volume, 497,469 tonnes of rice equivalent have been allocated under the TRQ system since January 2004.

13. This clear and undisputable factual evidence is the single most powerful proof that the Certificate of Control used by Turkey is an instrument of customs control that has not discriminated between exporting countries, that it has not been used differently on the basis of whether it related to TRQ or MFN rice import applications, and that both *de jure* and *de facto* it is not intended to act as an import license. It is not an import license, but an administrative form that, when duly filled and approved by MARA, can be shown at point of entry into Turkey, therefore fulfilling its customs purposes.

14. Turkish law does provide for the use of import licenses. These were required for imports of rice within the TRQ, and were separate and distinct forms from the Certificates of Control in that they did not serve a customs purpose, but rather aimed at allocating the available quota among traders and guaranteeing predictability of the market supply. These dedicated import license forms had the distinctive traits that import licenses have in all countries where they are utilized: the issue number; the quota period; the authority responsible for issue; the last day of validity; the quantity expressed in

quota unit; and the security (as applicable). All these information requirements are not present on Certificates of Control.

15. The tariff rate quota (TRQ) system, introduced in April 2004, created a preferential access regime for importation of rice into Turkey. The TRQ was not introduced as an instrument to protect or distort trade, but rather as a tool to achieve the necessary supply of rice to Turkey and to stabilize the domestic market. Very simply, the TRQ provided a tariff advantage to import rice up to predetermined quantities. Any interested importer of foreign rice could apply if there was compliance with the requirements and conditions set out by relevant Turkish legislation. In particular, to take advantage of this system, any interested importer needed to take the following steps: apply for an import license to the Undersecretariat of Foreign Trade (UFT), indicate compliance with the domestic purchase requirement, receive approval by UFT, fill-out the Certificate of Control and receive approval from MARA, lodge the required security to guarantee actual importation, pay the applicable customs duties at point of entry, and place the imported rice on the Turkish market.

16. The TRQ has systematically been allocated on a "*first-come-first-served*" basis and has never discriminated on the basis of country of origin of the rice or nationality/affiliation of the importer applying for a license. The requirements for the application and evaluation procedures of the import licenses have always been clear, transparent and easy to implement for all importers. Similarly, the administrative procedures for licensing have always been simple and user-friendly. All documents required for application have always been published in the relevant legislation. When all application requirements were met, the import licenses have systematically been issued with an average administrative delay of 5 days. In addition to the import licenses obtained for purposes of quota allocation, of course, importers also had to comply with all other customs obligations and requirements, in particular the presentation and approval by MARA of the required Certificates of Control. The tariff quota system was never meant to act as and never had any restrictive or discriminatory effects on trade and rice imports. Rather, the system was voluntary and conferred an advantage to the importers meeting the requirements stipulated in the legislation, including the domestic purchase requirement. Importers have always been free to make use of the system or not. Evidence clearly indicates that the high volumes of in-quota imports and the high numbers of licences and Certificates of Control which have been issued and approved (respectively) are testimony to the attractiveness and appeal that the tariff advantage has had in the business determinations made by importers.

On the US Claims Relating to Turkey's Alleged Denial of Import Licences

Certificates of Control are not Import Licences within the Meaning of Article 1.1 of the Agreement on Import Licensing Procedures

17. Turkey does not operate (and never did) an import licensing system in relation to the importation of rice at the MFN or applied rates of duty (hereinafter, the MFN trade). On the other hand, an import licensing system has been operated for purposes of administering the allocation of the rice quotas which have been opened between 2004 and 2006 at preferential rates of duty (hereinafter, the TRQ trade). There is a clear and distinctive difference between the administrative forms to be used in connection with the customs procedures (i.e., the Certificates of Control required to facilitate customs clearance of rice imports in relation to both MFN and TRQ trade) and those needed to apply for a license in order to be allocated part of the quota and benefit from the tariff advantage (i.e., the import licenses which are required for importation of rice in relation to TRQ trade).

18. GATT Article XI:1 does not define the concept of "*import license*". Neither is this concept defined by the Agreement on Agriculture when, in footnote 1 to Article 4.2 thereof, it refers to "*discretionary import licenses*" as being quantitative restrictions. According to the panel report in *EC – Bananas*, "*the notion of 'import licensing' is limited to procedures requiring the submission of*

an application or other documentation (other than that required for customs purposes) to the relevant administrative body". Turkey's Certificates of Control have not been adopted, and are not required by Turkey, in order to comply with the "*administrative procedures used for the operation of import licensing regimes"* in the meaning of Article 1 of the Agreement on Import Licensing Procedures. In fact, there is no import licensing regime applicable to imports of rice into Turkey under MFN trade. There is an import licensing regime only in relation to rice imports under TRQ trade.

19. Turkey's Certificates of Control amount to administrative forms that are required exclusively for "*customs purposes*". If all informative data is duly provided by the importers, and MARA determines compliance with all relevant specifications, standards and technical regulations (i.e., human health and safety, animal or plant life or health, environmental protection, fitness for use, product safety, public policies, etc.), the Certificates of Control are automatically approved. At that point, importers may use them as official documents for "*customs purposes*", when seeking customs clearance at point of entry into Turkey. With respect to MFN trade, there is no 'administrative procedure' or 'licensing requirement' provided by law other than the mere approval by MARA of Certificates of Control for "*customs purposes*".

20. It appears clear that Turkey's Certificates of Control are not "*administrative procedures used for the operation of import licensing regimes*", but are "*required for customs purposes*" within the meaning of Article 1.1 of the Agreement on Import Licensing Procedures. Therefore, the claim by the United States that the Certificate of Control is an import license must be rejected.

The Lack of Approval of Certain Individual Certificates of Control does not Amount to a Prohibition or Restriction of Rice Imports within the Meaning of Article XI:1 of the GATT 1994

21. Having established that the Certificate of Control is not an import license within the meaning of the Agreement on Import Licensing Procedures, Turkey considers that the Certificate of Control cannot be considered an import license under GATT Article XI:1. The United States fails to indicate in its pleading on what grounds Turkey's Certificate of Control (and the alleged denial thereof) can or should be considered an "*other measure*" for purposes of the application of GATT Article XI. Because of the *de jure* and *de facto* operation of the Certificate of Control, it is clear that no "*prohibition*" or "*restriction*" of rice importation through any "*other measure*", falling within the meaning of GATT Article XI:1, has occurred through the alleged 'denial of Certificates of Control to import rice'.

22. The United States has failed to show that Turkey's alleged 'denial of Certificates of Control to import rice' constitute an "*other measure*" within the meaning of GATT Article XI:1 and a *de jure* and/or *de facto* "*prohibition*" or "*restriction*" of the type that GATT Article XI considers a quantitative measure that should not be "*instituted or maintained*". As there is no "*restriction*" or "*prohibition*", the nature of the "*measure*" is of no relevance. For this reason, the claim by the United States under GATT Article XI must be rejected.

The Lack of Approval of Certain Individual Certificates of Control does not Constitute a Measure within the Meaning of Article 4.2 of the Agreement on Agriculture

23. Having indicated that the Certificates of Control are not import licenses within the meaning of the Agreement on Import Licensing Procedures, that there is clearly no 'denial' of Certificates of Control, and that there is no *de jure* or *de facto* import prohibition or restriction within the meaning of GATT Article XI:1, Turkey maintains that there cannot be "*discretionary import licensing*" and/or "*quantitative import restrictions*" within the meaning of Article 4.2 of the Agreement on Agriculture and footnote 1 thereof. Having conclusively demonstrated that there is no violation of GATT Article XI, Turkey believes that no further scrutiny should be conducted under the Agreement on

Agriculture. For this reason, the claim by the United States under Article 4.2 of the Agreement on Agriculture must be rejected.

The Publication and Administration of Turkey's Trade Regulations Complies with the Relevant Obligations under Article X of the GATT 1994

24. Turkey considers that its trade regulations are in full compliance with the transparency obligations under Article X of the GATT, as all relevant laws, regulations and administrative rulings with respect to Turkey's import regime for products, and in particular for rice, were always promptly published. All requirements connected to the Certificates of Control, including the accompanying documentation that must be provided for customs purposes, have systematically been published as indicated in the factual background. Incidentally, Turkey believes that the documents referred to by the United States as 'Letters of Acceptance', do not fall within the letter and the scope of GATT Article X in that they are mere instruments of internal communication among Turkish administrators and public officials.

25. Finally, the obligation under GATT Article X:2 does not appear to be pertinent to the case at issue in that the 'Letters of Acceptance' are not "*measures of general application*" that need to be published ahead of enforcement. Again, as indicated by the Appellate Body in *EC Poultry*, the transparency obligation of Article X relates to the *publication* and *administration* of 'laws, regulations, judicial decisions and administrative rulings of general application', rather than to the *substantive content* of such measures. The 'Letters of Acceptance' are never enforced and, in fact, cannot be legally enforced by any party (i.e., the importers, the administration, or the courts). Therefore, the related claim by the United States must be rejected.

Articles 1.4 and 3.5 of the Agreement on Import Licensing Procedures do not Apply

26. Along the same lines, Turkey reaffirms that the Certificates of Control are not import licenses within the meaning of the Agreement on Import Licensing Procedures. Therefore, the claim by the United States that Turkey has acted inconsistently with the obligations of transparency and due-process of Articles 1.4(a) and 1.4(b) of the Agreement on Import Licensing Procedures must be rejected for the inapplicability, in the case at issue, of the Agreement on Import Licensing Procedures.

On the US Claims Relating to Turkey's Tariff Rate Quotas Regime Requiring Domestic Purchase

The Domestic Purchase Requirement within Turkey's TRQ Regime is not Inconsistent with Article III:4 of the GATT 1994 in That it does not Accord Imported Rice Treatment Less Favourable Than Domestic Rice

27. Turkey believes that its domestic purchase requirement (DPR) does not '*affect the internal sale, offering for sale, purchase (…) or use*' of imported rice. In relevant part, the key issue with respect to the operation of Turkey's DPR and the allegations made by the United States under GATT Article III:4 appear to rest on the circumstance that the DPR would '*affect the internal sale, offering for sale, purchase (…) or use*' of imported rice by "adversely modifying the conditions of competition between domestic and imported products". The United States has failed to prove this allegation.

28. In particular, it is wrong and misleading to state that the fulfilment of the DPR by importers "*provides the only way to import rice into Turkey*". In fact, as widely known and as effectively evidenced by the trade-flows, any importer is free to import whatever quantity of rice into Turkey from whatever country at the MFN or applied rate of duty. The regime of importation which was applied within the TRQ was meant to provide an advantage to importers of foreign rice to adequately supply the Turkish rice market. In fact, it is well known that Turkey is a net importer of rice and that

imports are essential to stabilize the market (both in terms of price and quantities available). Turkey maintains that the opening itself of its TRQ was a trade policy that, while being necessary to stabilize the domestic market, resulted in the modification of the conditions of competition between domestic and imported products *in favour of imported products*.

29. The success rate in terms of applications for import licenses and volumes of imported rice within the TRQ clearly indicates that, despite the allegations of the United States, a considerable degree of appeal and competitive advantage was retained by the TRQ system, albeit "*affected by the DPR system*", in the eyes and business determinations of importers of foreign rice, independently of the country of origin. Had this element of competitive advantage not been there, the importers could still have imported rice at the MFN or applied rate of duty. In relation to the eligibility criteria, Turkish regulations never restricted the issuance of import licenses for rice imports under the TRQ system only to domestic rice producers. In fact, one of the categories eligible to receive import licenses were "*those who make purchase of paddy rice or rice from Turkish Grain Board*" (TMO). The United States maintains in its submission that this category would 'undoubtedly be domestic producers as well', but fails to argue or prove the validity of this assertion. The United States has also failed to prove that, '(t)his state of affairs negatively affects competitive conditions of imported rice in the Turkish marketplace'. For all these reasons, the claims by the United States that Turkey has acted inconsistently with GATT Article III:4 must be rejected.

Turkey has not Acted Inconsistently with Article XI:1 of the GATT 1994 Because its Domestic Purchase Requirement and the Eligibility Criteria do not Constitute Restrictions on Imports Other Than in the Form of Duties, Taxes or Other Charges

30. The TRQ regime, and its DPR system, only restricted imports in relation to the TRQ trade volumes (i.e., those imported at preferential rates) and in a strict non-discriminatory fashion, but never altered or removed the ability of importers to import unlimited quantities or rice from any origin at the applied or MFN bound rate. Therefore, it never resulted in a substantial restriction on imports of rice. Furthermore, the import licensing regime used to administer the TRQ regime was an automatic import licensing system and, therefore, not falling within the scope of GATT Article XI. There was never any *de jure* restriction of rice importation into Turkey since nothing in the relevant laws and regulations ever diminished the ability to import at the applied or MFN bound rates of duty. Furthermore, the TRQ regime acted to confer an advantage to importers of rice at preferential rates which available data show to have been largely used by importers, independently of the country of origin and despite the eligibility criteria of the DPR. Therefore, the claim that Turkey has acted inconsistently with GATT Article XI:1 in relation to the domestic purchase requirement and eligibility criteria of its TRQ regime must be rejected.

Other Claims

31. Turkey indicated that no violation Article 2.1 of the Agreement on Trade-Related Investment Measures can be argued given that no violation of GATT Article III:4 was maintained when the TRQ system was in force. The DPR instituted by Turkey under the TRQ regime did not amount to a measure in violation of GATT Article III:4 since it did not accord treatment less favourable to imported products nor did it adversely affect the conditions of competition to the detriment of imported products.

32. Turkey also showed that its TRQ regime was not based on discretionary import licensing and it is not correct to state that non-tariff measures were maintained through state trading enterprises in a way which made the DPR inconsistent with Article 4.2 of the Agreement on Agriculture. In particular, Turkey's import licensing system for purposes of allocating the TRQ to traders has never been a tool of discretionary import licensing. On the contrary, this system has always been an automatic import licensing system where approval of import licenses would be granted in all cases,

provided that all application requirements were met by importers. Furthermore, Turkey recalls that the TMO was only one of the possible providers of domestic rice under the three categories of the DPR (i.e., paddy producers having permission to plant paddy rice, their cooperatives and unions or the TMO). Therefore, the United States failed to prove how the TMO could be in a position to operate non-tariff measures on imports of TRQ rice.

33. For these reasons, all the related claims by the United States that Turkey has acted inconsistently with its WTO obligations under the covered agreements must be rejected.

US Claims Relating to Turkey's Import Licensing Regime as a Whole

34. Turkey indicated that there is no *de jure* or *de facto* 'denial' of approval of Certificates of Control in breach of GATT Article XI. The Certificates of Control are not 'import licenses' but administrative forms relevant for "*customs purposes*", which are aimed at ensuring compliance with legitimate objectives. Turkey has also provided relevant data and trade statistics clearly indicating that MFN trade in rice has effectively occurred throughout the operation of the TRQ regime. There is no legal or operational link between the legislative framework that provides for the TRQ regime and the one regulating MFN trade would aim at seriously restricting market access. There is no prohibition or restriction connected with either the Certificates of Control or Turkey's TRQ regime. There are no discretionary import licensing procedures. There are no seasonal bans. Therefore, none of these instruments has ever acted, either individually or in combination with one another, to deter full utilization of the quotas opened within the TRQ regime or to prohibit or restrict MFN trade. Turkey also maintained that its system of rice importation as a whole was never inconsistent with the Agreement on Agriculture and the Agreement on Import Licensing Procedures.

35. Finally, Turkey emphasized that the legislative framework providing for the TRQ regime, including the domestic purchase requirement, is no longer in force. The legal validity of all relevant legislation expired before the commencement of the Panel proceedings. Turkey has not renewed these measures, neither extending them nor adopting new legislative instruments. Turkey submitted that certain Panels and the Appellate Body have found it "*inconsistent*" to make recommendations on measures which were no longer in force. In particular, in *Dominican Republic – Cigarettes*, the Panel did not find it appropriate to recommend to the Dispute Settlement Body that it make any request to the Dominican Republic regarding this measure since it was no longer in force. For these reasons, Turkey respectfully requested the Panel to either refrain from making findings on the measures related to Turkey's TRQ regime as no longer in force, or, should the Panel consider making these findings necessary for purposes of securing a positive solution to the dispute, not to make any recommendation to the Dispute Settlement Body.

Conclusion

36. For all the reasons set out above, Turkey respectfully requested the Panel to reject all claims made by the United States and find that Turkey's relevant laws, regulations and procedures, both in relation to MFN and TRQ rice imports, are not inconsistent with Articles III:4, X:1, X:2, and XI:1 of the GATT 1994; Article 4.2 of the Agriculture Agreement; Articles 1.4(a) and (b), 3.5(a), (e), (f), and (h), 5.1, 5.2(a), (b), (c), (d), (e), (g), and (h), 5.3, and 5.4 of the Agreement on Import Licensing Procedures; and Article 2.1 and paragraph 1(a) of Annex 1 of the Agreement on Trade-Related Investment Measures.

ANNEX A-3

THIRD PARTY WRITTEN SUBMISSION BY CHINA
(18 October 2006)

I. INTRODUCTION

1. The People's Republic of China (hereafter "China") makes this third party submission because of its systemic interests in the correct interpretation and application of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994") , and the *Agreement on Trade-Related Investment Measures* (the "TRIMs Agreement") in relation to the present dispute.

2. In this written submission, firstly we will discuss the proper interpretation of Article XI:1 and Article III:4 of GATT 1994. Then, we will address the question of application of the TRIMs Agreement and the measures at issue.

II. ARTICLE XI:1 OF GATT 1994

3. The US alleges that, Certificates of Control is an import license, and since September 2003, the competent authority of Turkey has not issued Certificates of Control for rice to be imported at the bound tariff rates, thereby effectively preventing any out-of-quota imports.[1] However, Turkey disputes this fact and by claiming that it serves the purpose of customs, argues that Certificates of Control is not an import license, and has been approved all the time.[2]

4. On this point, China is of the view that, the essence of the issue under GATT Article XI:1 is that whether the Certificate of Control prohibits or restricts trade of rice in practice. Even assuming, *arguendo*, that the Certificate of Control is not an import license, if it prohibits or restricts the import of rice, it may still constitute an "other measure" which is inconsistent with GATT Article XI:1.

5. As to the interpretation of the term "restriction" in GATT Article XI:1, the panel of the case *India-QRs* held that the scope of the term "restriction" in Article XI:1 was also broad, as seen in its ordinary meaning, which was "a limitation on action, a limiting condition or regulation".[3] Another panel endorsed this finding and noted that, "[o]n a plain reading, it is clear that a 'restriction' need not be a blanket prohibition or a precise numerical limit."[4]

6. To give a clearer interpretation of restriction or limitation, China considers that the following elaboration of the panel in *India – Quantitative Restrictions* is illuminating:

> "[After examining several GATT panel reports, the panel stated that] These reports are consistent with the ordinary meaning noted above, as discretionary or non-automatic licensing systems by their very nature operate as limitations on action since certain imports may not be permitted. Thus, in light of the terms of Article XI:1 and these adopted panel reports, we conclude that a discretionary or non-automatic import licensing requirement is a restriction prohibited by Article XI:1."

7. Although this statement was made towards import license, the rationale is applicable to "other measures" under GATT Article XI:1. In other words, if an "other measure" subject to the discretion of

[1] The US first written submission, paras. 59-73.
[2] Turkey's first written submission, paras. 47-69.
[3] Panel Report, *India – Quantitative Restrictions*, para. 5.128.
[4] Panel Report, *India – Autos*, para. 7.270.

a government agency and may block certain imports, such measure should be deemed to operate as limitations on imports and is not permitted by Article XI:1. Specific to this case, if the Certificates of Control has effect of prohibition or limitation on importation of rise, such Certificate probably constitutes restrictions on imports and violates Article XI:1.

III. ARTICLE III OF GATT 1994

8. With respect to domestic purchase requirement, the US claims that it violates GATT Article III:4, whereas Turkey denies such claim. Specifically, Turkey argues that with the benefit of lower tariff rate, the domestic purchase requirement actually altered the conditions of competition in favour of imported product, and therefore was consistent with Article III:4.[5]

9. However, in China's view, such line of reasoning seems questionable. Article III deals with the comparison of treatments between the products imported and national products, and has no relation to the level of tariff. If domestic purchase requirement alters the competition conditions to the detriment of imported products and thus violates Article III:4, the violation could not be redressed or offset by the benefit of lower tariff rate. Accordingly, Turkey can not invoke the beneficial tariff under the TRQ as the excuse from violation of Article III:4, if such violation is found by the panel.

IV. THE APPLICATION OF TRIMS AGREEMENT

10. The US claims that Turkey is in breach of Article 2.1 and Paragraph 1(a) of the Annex 1 of the TRIMs Agreement. On this point, the United States argues that the TRIMs Agreement does not define what is a "trade-related investment measure" that would breach Article III:4, and Turkey's domestic purchase requirement satisfies both of the two elements contained in paragraph 1(a) of Annex 1 of the TRIMs Agreement; thus, the measure at issue is inconsistent with Article 2.1 and Paragraph 1(a) of Annex 1 of the TRIMs Agreement. [6]

11. Turkey argues that the subject measure is consistent with GATT Article III:4, and therefore does not violate Article 2.1 of the TRIMs Agreement.[7] It seems that Turkey ignores the fact that the US fails to define what is a "trade-related investment measure" and prove Turkey's measure constitutes a TRIM[8]. China wishes to raise its observation in this regard.

12. Article 2 of the TRIMs Agreement provides:

> 1. Without prejudice to other rights and obligations under GATT 1994, no Member shall apply any TRIM that is inconsistent with the provisions of Article III or Article XI of GATT 1994.
>
> 2. An illustrative list of TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 and the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 is contained in the Annex to this Agreement.

13. Concerning the claim made under Article 2 of the TRIMs Agreement, the panel in *Indonesia – Autos* spelt out that "[b]y its terms, Article 2.1 requires two elements to be shown to

[5] Turkey's first written submission, paras. 95-99.
[6] The US first written submission, paras. 110-112.
[7] Turkey's first written submission, paras. 110-113.
[8] TRIM is the abbreviation of "trade-related investment measure", note added by China.

establish a violation thereof: first, the existence of a TRIM; second, that TRIM is inconsistent with Article III or Article XI of GATT. "[9]

14. China wishes to stress that the TRIMs Agreement is a fully fledged treaty with autonomous legal existence, and it must have its own application scope. In fact, Article 1 of the TRIMs Agreement which is entitled "*Coverage*," expressly provides:

> This Agreement applies to investment measures related to trade in goods only (referred to in this Agreement as "TRIMs").

15. Although the TRIMs Agreement does not define what a TRIM is, this term could be interpreted properly according to the principle set forth in Article 3.2 of the *Understanding on Rules and Procedures Governing the Settlement of Dispute* (the "DSU"). In no case it is proper to bring a measure out of the coverage of TRIMs Agreement under the jurisdiction of it.

16. Furthermore, the chapeau of paragraph 1 of Annex 1 of the TRIMs Agreement states that:

> *TRIMs* that are inconsistent with the obligation of national treatment provide for in paragraph 4 of Article III of GATT 1994 include those […](Emphasis added.)

17. This provision, corresponding with the provision of Article 1, clearly shows that, before the examination of paragraph 1(a) of Annex 1 of the TRIMs Agreement, a measure must firstly be found to be a TRIM.

18. According to above-mentioned principles, the United States, as the complaining party, should establish *prima facie* cases for the two elements before the Panel proceeds to consider its claim under Article 2.1 of the TRIMs Agreement, but it failed to do so.

19. If the reasoning put forward by the United States prevailed, a measure could jump over Article 1 and the chapeau of paragraph 1 of Annex 1, be considered directly under Paragraph 1(a) of Annex 1 of the TRIMs Agreement. In such case, Article 1 and the chapeau of paragraph 1 of Annex 1of the TRIMs Agreement would be turned superfluous and meaningless.

V. THE MEASURES AT ISSUE

20. China notices that claims made by the United States are divided into three groups, namely, Turkey's denial of import licenses, Turkey's TRQ regime requiring domestic purchase, and Turkey's import licensing regime as a whole. The United States did not define "Turkey's import licensing regime as a whole". According to the context of the US's first written submission, this term seems to refer to the joint operation of Turkey's TRQ regime and Certificate of Control system, which have already been challenged separately.

21. Although Turkey does not disagree with the identification and categorization of subject measures, China is concerned about such kind of approach of challenging a regime "as a whole". Generally speaking, the scope of the measures challenged under the title of "regime as a whole" tends to be vague and can not meet the requirement of specificity in Article 6.2 of the DSU. As to the present dispute, the "as a whole" claim did not appear in the US's panel's request and should not be included in the panel's terms of reference.

[9] Panel Report, *Indonesia – Autos*, para. 14.64.

VI. CONCLUSION

22. In the light of the relevant WTO/GATT jurisprudence and the analytical approach with regard to the measures in question set forth above, China hopes the viewpoints and various issues raised in this submission may assist the Panel in its decision.

ANNEX A-4

THIRD PARTY WRITTEN SUBMISSION BY EGYPT
(18 October 2006)

I. INTRODUCTION

1. The Arab Republic of Egypt (hereinafter, "Egypt") welcomes this opportunity to provide the Panel with its views on the legal claims raised by the United States of America (hereinafter, the "United States") with respect to the measures set up by Turkey to regulate imports of rice.

2. Egypt has decided to intervene as a third party in this dispute since it is an important producer of rice and has, traditionally, been amongst the main exporters of rice to Turkey. Also, Egypt has a systemic interest in the correct interpretation of the WTO Agreements and, in particular, the General Agreement on Tariff and Trade 1994 (hereinafter, the "GATT 1994"), the Agreement on Agriculture and the Agreement on Import Licensing Procedures (hereinafter, the "Import Licensing Agreement").

3. Egypt has essentially limited this submission to questions related to the proper interpretation of Articles III:4 and XI:1 of GATT 1994 and Article 4.2 of the Agreement on Agriculture. Its conclusions are as follows:

- prohibitions or restrictions on the importation of rice are inconsistent with Article XI:1 of the GATT 1994;
- restrictions on imports of rice are not permitted under Article 4.2 of the Agreement on Agriculture; and,
- domestic purchase requirements affecting imports of rice are inconsistent with Article III:4 of the GATT 1994.

4. Egypt recognizes that many of the issues raised in this dispute are solely or primarily factual in nature.

5. Given the short period between the deadline for the first written submission of Turkey and the deadline for the third party submission, Egypt has been unable to incorporate in this submission a response to all the arguments brought by Turkey. Consequently, Egypt reserves it right to address new arguments and further develop the arguments set out hereinbelow at the third party session of the first substantive meeting of the Panel. It will also be available to answer any questions the Panel may have on this occasion.

II. IMPORT PROHIBITIONS OR RESTRICTIONS OF RICE ARE INCONSISTENT WITH ARTICLE XI:1 OF THE GATT 1994

1. Any General Denial of Certificates of Control for Imports of Rice is to be Considered as a Prohibition or Restriction under Article XI:1

6. The United States claims that Turkey's denial to issue Certificates of Control to importers actually restricts or prohibits the importation of rice at the over-quota rate and is thus, inconsistent with Article XI:I of the GATT 1994. The United Stated argues that the Certificate of Control is an "import license" or an "other measure" within the meaning of Article XI:1 because Turkey's Ministry of Agriculture and Rural Affairs (hereinafter, "MARA") requires importers to submit an application

for a Certificate and that application must be granted in order for the importation to take place[1]. It is further contended that the Certificates would, in any event, be a prohibition or restriction on importation for the purposes of Article XI:1.

7. In response to the claims raised by the United States, Turkey contends that the Certificates of Control are not import licenses within the meaning of Article 1.1 of the Import Licensing Agreement since they are required exclusively for customs purposes and the lack of approval of certain individual Certificates cannot be considered to amount to a prohibition or restriction on rice imports within the meaning of Article XI:1[2].

8. Article XI:1 of the GATT 1994 provides:

> "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party."

9. In *Dominican Republic – Import and Sale of Cigarettes*, the Panel stated that "Article XI:1 of the GATT covers prohibitions and restrictions, other than duties, taxes or other charges, on the importation or the exportation of products"[3]. Previously, in *India – Quantitative Restrictions,* the Panel had found that "[T]he text of Article XI:1 is very broad in scope, providing for a general ban on import or export restrictions or prohibitions 'other than duties, taxes or other charges'." Referring to the findings of *Japan – Semi-conductors*, the Panel then noted that "the wording of Article XI:1 is comprehensive: it applies 'to all measures instituted or maintained by a [Member] prohibiting or restricting the importation, exportation, or sale for export of products other than measures that take the form of duties, taxes or other charges. The scope of the term 'restriction' is also broad, as seen in its ordinary meaning, which is 'a limitation on action, a limiting condition or regulation'"[4]. In *India – Autos*, the Panel confirmed that the expression "other measures" in Article XI implies a "broad scope" as to the types of measures that are covered. It is the "nature of the measure as a restriction in relation to importation which is the key factor to consider in determining whether a measure may properly fall within the scope of Article XI:1"[5].

10. Considering the above-mentioned precedents, Egypt submits that regardless of the form that a quantitative import restriction or prohibition takes, it is inconsistent with Article XI:1. If, as claimed by the United States, the Certificates of Control actually restricted or prevented the importation of rice into Turkey they should be considered as measures falling within the scope of Article XI:1.

11. The fact that the Certificates of Control may be administrative forms that are required exclusively for customs purposes, within the meaning of Article 1.1 of the Import Licensing Agreement, does not confirm the consistency of the Turkish rice import regime with Article XI:1. Certificates of Control, if not considered as import licenses, must be considered as measures covered by Article X1:1, since they are not duties, taxes or other charges.

12. As indicated by Turkey, the essential element with respect to the consistency of its system of Certificates of Control with Article XI:1 is whether it resulted in a quantitative restriction[6]. In order

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[1] First written submission of the United States, paras. 59-63.
[2] First written submission of Turkey, paras. 47-69.
[3] *Dominican Republic – Import and Sale of Cigarettes*, para. 7.248.
[4] *India – Quantitative Restrictions*, para. 5.128.
[5] *India – Autos*, para. 7.261.
[6] First written submission of Turkey, para. 62.

to determine this element, Egypt submits that all the elements before the Panel should be considered. The fact that the unpublished Letters of Acceptance issued by the Turkish Minister of Agriculture to MARA to delay the issuance of Certificates of Control may not be considered as "laws, regulations, judicial decisions or administrative rulings" is irrelevant in determining whether the system of Certificates of Control is consistent with Article XI:1. In *Korea – Various Measures on Beef,* in order to establish that the Korean beef import regime imposed restrictions within the meaning of Article XI:1, the Panel considered the lack and delays of the tendering authority in calling for tenders and its discharge practices[7]. Consequently, to determine whether the alleged denial of Certificates of Control constitutes a prohibition or restriction under Article XI:1, the Letters of Acceptance issued by the Minister of Agriculture should be considered, amongst other elements.

2. The Joint Operation of a TRQ Regime and a General Import Regime Restricting or Preventing Imports of Rice into Turkey is Inconsistent with Article XI:1

13. The United States argues that the eligibility criteria to purchase rice under the TRQ are in breach of Article XI:1 because they limit the range of entities that may import rice into Turkey and, therefore constitute a restriction on importation within the meaning of that Article[8]. Also, the United States claims that the TRQ system, operating in conjunction with the failure of MARA to grant Certificates of Control is inconsistent with Article XI:1[9].

14. In response to these arguments, Turkey contends that since the TRQ regime, and its domestic purchase requirement obligation, only cover imports made under the TRQ regime, and the latter does not prevent importers from importing rice outside the TRQ, the TRQ eligibility criteria do not restrict the importation of rice into Turkey[10]. For the same reason, Turkey argues that the TRQ regime, in conjunction with the general import regime, i.e., concerning imports outside the TRQ, is consistent with Article XI:1[11].

15. Egypt considers that in order to determine whether or not the TRQ eligibility criteria constitute a restriction to the importation of rice under Article XI:1, the Panel must examine the general import regime together with the TRQ. Indeed, both the general import regime and the TRQ regime actually govern the importation of rice into Turkey.

16. The joint examination of both the TRQ and general regime is particularly pertinent if the Panel was to concur with the United States in finding that the denial to issue Certificates of Control outside the TRQ regime has forced importers to import under the TRQ regime. If this was the case, the Panel should determine whether the TRQ eligibility criteria has restricted or prevented imports of rice into Turkey within the meaning of Article XI:1. In line with the conclusions of the Panel in *India – Quantitative Restrictions*[12], if it is found that the TRQ regime is a discretionary or non-automatic import licensing regime, it should be considered as a restriction prohibited by Article XI:1. Also, if it is established that no imports of rice were possible during the periods where access to the TRQ was suspended, the resulting ban should be considered as a prohibition within the meaning of Article XI:1.

[7] *Korea – Various Measures on Beef*, para. 767.
[8] First written submission of the United States, paras. 106-109.
[9] First written submission of the United States, paras. 120-124.
[10] First written submission of Turkey, paras. 104-109.
[11] First written submission of Turkey, paras. 124-128.
[12] *India – Quantitative Restrictions*, paras. 5.130-131.

III. RESTRICTIONS ON IMPORTS OF AGRICULTURAL PRODUCTS ARE NOT PERMITTED UNDER ARTICLE 4.2 OF THE AGREEMENT ON AGRICULTURE

17. The United States claims that Turkey's denial to issue Certificates of Control to importers of rice is inconsistent with Article 4.2 of the Agreement on Agriculture since it constitutes a measure of the kind required to be converted into ordinary customs duties[13]. Also, the United States argues that the domestic purchase requirement provided for under the TRQ regime, considered independently or with the denial of Certificates of Control under the general import regime, are breaching Article 4.2[14].

18. Turkey considers that it has complied with Article 4.2 since its Certificates of Control are not import licenses, their issuance has not been denied, and there is no prohibition or restriction on imports of rice within the meaning of Article XI:1 of the GATT 1994[15]. With respect to its TRQ regime, Turkey contends that it is also consistent with Article 4.2 since it rests on an automatic import licensing system[16].

19. Article 4.2 of the Agreement on Agriculture prevents Members from maintaining, resorting to or reverting "to any measures of the kind which have been required to be converted into ordinary customs duties, except as otherwise provided for in Article 4.2". Footnote 1 to Article 4.2 provides that the measures covered include, amongst others: "quantitative import restrictions", "discretionary import licensing" and "similar border measures other than ordinary customs duties".

20. In *Chile – Price Band System*, the Appellate Body found that "Article 4.2 was drafted in the present perfect tense to ensure that measures that were required to be converted as a result of the Uruguay Round -- but were not converted -- could not be maintained, by virtue of that Article, from the date of the entry into force of the WTO Agreement on 1 January 1995"[17]. The Appellate Body also considered that the reference to the residual category of "similar border measures other than ordinary customs duties", indicates that "the drafters of the Agreement did not seek to identify all 'measures which have been required to be converted' during the Uruguay Round negotiations"[18].

21. In the light of the interpretation of Article 4.2 given by the Appellate Body in *Chile – Price Band System*, Egypt considers that all measures that should have been converted into ordinary customs duties are inconsistent with this Article. These measures include "discretionary import licensing" regimes but also all measures generally preventing or restricting importation of agricultural products. Consequently, if the Panel was to find that the denial of Certificates of Control and the TRQ regime, either independently or in conjunction, prohibit or restrict imports of rice into Turkey, it should establish a violation of Article 4.2 has occurred. Whether or not the Certificates of Control and the TRQ regime are a "discretionary import licensing systems" or "quantitative import restrictions" within the meaning of Article 4.2 ,should not limit the Panel in its analysis of the consistency of the measures at issue.

22. It should also be noted that panels have found that restrictions on agricultural products that were found to be inconsistent with Article XI:1 of the GATT 1994 constituted violations of Article 4.2. In *Korea – Various Measures on Beef*, the Panel, after having reached the conclusion that the measures considered were inconsistent with Article XI, came to the conclusion that the same measures were necessarily inconsistent with Article 4.2 of the Agreement on Agriculture and its

[13] First written submission of the United States, paras. 74-78.
[14] Paras. 113-115 and 125.
[15] First written submission of Turkey, para. 71.
[16] Para. 115.
[17] *Chile – Price Band System*, para. 207.
[18] Para 210.

footnote referring to non-tariff measures maintained through state-trading[19]. Similarly, in *India – Quantitative Restrictions*, the Panel, after having found that the measures at issue were violating Article XI:1, considered that these measures violated Article 4.2[20].

IV. DOMESTIC PURCHASE REQUIREMENTS AFFECTING ALL IMPORTS OF RICE ARE INCONSISTENT WITH ARTICLE III:4 OF THE GATT 1994

23. The United States alleges that the domestic purchase requirement imposed under the TRQ regime is inconsistent with Article III:4 of the GATT 1994. In support of its allegation, the United States considers that imported and domestic products are "like products"; that the measures governing the TRQ regimes are to be considered as laws, regulations or requirements "affecting their internal sale, offering for sale, purchase, transportation or use"; and that imported rice is treated less favourably than domestic rice and that the conditions for imported rice in the Turkish market are being affected[21].

24. Turkey expresses the opinion that the domestic purchase requirement of its TRQ regime does not affect the "internal sale, offering for sale, purchase, transportation or use" of imported rice, neither does it adversely modify "the conditions of competition between domestic and imported products". Therefore, Turkey claims that it has not acted inconsistently with Article III:4[22].

25. Article III:4 of the GATT 1994 provides:

> "The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product."

26. In the event that the denial of the Certificates of Control by MARA is established and it is found that importers had no other option than to import rice under the TRQ regime, the consistency of this regime with Article III:4 must be considered. Indeed, Egypt submits that a violation of Article III:4 can only be established if importers were deprived of their right to import without any conditions, regarding the origin of the imported rice or the imported volumes in particular, at the MFN or applied rates.

27. Since neither the United States nor Turkey dispute that the imported and domestic products are "like" products and that the measures governing the TRQ regime are "laws, regulations or requirements" within the meaning of Article III:4, one must examine whether these measures affect the "internal sale, offering for sale, purchase, transportation, distribution or use" of imported rice and whether imported products are treated less favourably then domestic products.

28. In *Canada – Autos*, the Panel noted that the word "affecting" in Article III:4 "has been interpreted to cover not only laws and regulations which directly govern the conditions of sale or purchase but also any laws or regulations which might adversely modify the conditions of competition

[19] *Korea – Various Measures on Beef*, para. 768.
[20] *India – Quantitative Restrictions*, paras. 5.238-242.
[21] First written submission of the United States, paras. 86-87.
[22] First written submission of Turkey, paras. 88-99.

between domestic and imported products"[23]. In the framework of the *US – FSC* Article 21.5 proceedings, the Appellate Body interpreted "affecting" as having a "broad scope of application". Further, in *India – Autos*, the Panel considered that the term "affecting" "goes beyond laws and regulations which directly govern the conditions of sale or purchase to cover also any laws or regulations which might adversely modify the conditions of competition between domestic and imported products.[24] In the case at hand, Egypt considers that the TRQ regime criteria, and more particularly the domestic purchase requirement, should be considered as affecting the internal sale, offering for sale purchase and use of imported rice, since importers must comply with these criteria when importing rice under the TRQ.

29. The text of the first sentence of Article III:4, in addition to past panel reports, clearly provides that imported products shall be accorded treatment no less favourable than the like domestic products once they have been cleared through customs. This is in line with the broader objective of Article III "to provide equal conditions of competition"[25]. The words "treatment no less favourable" call for "effective equality of opportunities for imported products in respect of the application of laws, regulations or requirements affecting the sale, offering for sale, purchase, transportation, distribution or use of products"[26]. In *India – Autos*, having noted that the measures at issue requirement generated "an incentive to purchase and use domestic products and hence creates a disincentive to use like imported products", the Panel considered that they were modifying the conditions of competition in favour of the domestic products[27].

30. If the TRQ regime was the only option available to importers to import rice into Turkey, it is submitted that the domestic purchase requirement adversely modified the conditions of competition between imported and domestic rice to the benefit of the latter. Regardless of the eventual unit cost of rice imported under the TRQ regime compared to domestic rice, the obligation for importers to purchase domestic rice as a pre-condition for the importation of rice accords less favourable treatment to imported rice since domestic producers were not subject to a similar requirement and should, thus, be considered contrary to Article III:4.

V. CONCLUSION

31. Egypt thanks the Panel for providing it with an opportunity to comment on the issues at stake in these legal proceedings and hopes that's its comments will prove to be useful.

[23] *Canada – Autos*, para. 10.80.
[24] *India – Autos*, para. 7.196.
[25] *US – FSC (Article 21.5 – EC)*, para.210.
[26] *US – Section 337*, para. 5.11.
[27] *India – Autos*, paras. 7. 201-202.

ANNEX A-5

**THIRD PARTY WRITTEN SUBMISSION
OF THE EUROPEAN COMMUNITIES**
(18 October 2006)

I. INTRODUCTION

1. The European Communities (hereafter "the EC") makes this third party submission because of its systemic interest in the correct interpretation of Articles III:4, XI:1 of the *GATT 1994*, Article 4.2. of the *Agreement on Agriculture*, Article 2.1 and Paragraph 1(a) of the Annex 1 of the *Agreement on Trade-Related Investment Measures* (TRIMs Agreement), the *Agreement on Import Licensing Procedures* and Articles 3.3 and 11 of the *Dispute Settlement Understanding* (DSU).

2. Many of the issues in dispute involve questions of fact on which the EC does not comment. It appears that on most if not all aspects of facts US and Turkey have directly opposing views. This submission will therefore address only a limited number of issues of legal interpretation which are of particular interest to the EC. The EC reserves its right to comment on other matters in its oral statement.

3. The EC notes that the US first submission appears to include some ambiguities on how the alleged Turkish system should be examined under the different relevant agreements. In particular, the US first separates the alleged denial of import licenses from the allegations concerning the Turkish tariff rate quota ('TRQ') on rice but then in the third part it examines these two issues in conjunction. However, the US does not clarify whether the separate analysis of the two parts of the alleged system is its primary position and whether the third part i.e. analysis of the parts of the alleged system in conjunction is an alternative position.

4. Section II of this written submission addresses considerations on whether the US first submission alleges an "as such" finding of the Turkish measures or rather a series of "as applied" measures. Section III in turn examines the definition of an import licence. Sections IV and V then examine some issues relating to the borderline between Article XI *GATT* and Article 4.2. of the Agreement on Agriculture and Article III:4 of the *GATT* respectively. Finally, Section VI contains some considerations due to the fact that the Turkish TRQ regime has ceased to exist. Section VII summarises the main conclusions.

II. DOES THE US MAKE AN "AS SUCH" OR AN "AS APPLIED" CLAIM?

5. The EC considers that the way in which the claims are put forward by the United States raises systemic issues that the Panel should consider with particular care.

6. In the introduction to its first written submission, the United States states that "Turkey has instituted a non-transparent, discretionary import licensing system to restrict and, at times, eliminate imports of rice".[1] Although not stated explicitly, the reference to a "system" could be understood to refer to an "as such" claim instead of an "as applied" claim. In other words, the US appears to consider that the Turkish system concerning imports of rice violates the relevant agreements and not just its application in specific instances.

[1] First written submission of the United States, para. 1.

7. Subsequently in its first written submission the United States describes the alleged denial of import licenses *inter alia* as "an unofficial ban".[2] It appears that in particular with respect to the alleged denial of import licenses the US case relies on internal documents of the Turkish administration and reference is also made to oral instructions given to Turkish officials. In the view of the EC these arguments appear to make rather an "as applied" claim than an "as such" claim. In other words, the US appears to be attacking the way the system is applied in practice.

8. The European Communities would also like to draw the attention of the Panel to the fact that the United States is claiming that the alleged *practice* of denial i.e. the *omission* to grant the Certificates of Control is a *measure* that falls within the category of a prohibited measure *inter alia* under Article XI:1 of the *GATT* and Article 4.2. of the *Agreement on Agriculture*.

9. The EC respectfully submits that before violation of these provisions can be established on the basis of the alleged practice not to grant import licenses i.e. an alleged omission, the US has the burden of making a *prima facie* case by asserting relevant fact, adducing probative evidence in support of such assertions of fact, and making and developing relevant legal argument.

10. The EC considers that a useful starting point is the definitions provided by the Appellate Body in *US – Zeroing (EC)*. In this case the Appellate Body clarified that any act or omission attributable to a WTO Member can be a measure of that Member for the purposes of dispute settlement proceedings, within the meaning of Article 3.3 of the DSU. This includes not only acts applying a law in a specific situation, but also acts setting forth rules or norms that are intended to have general and prospective application, irrespective of how or whether they are applied in a particular instance.[3] This is so even if such rules or norms are not expressed in the form of a written instrument.[4]

11. The Appellate Body has repeatedly emphasised the seriousness of "as such" claims, since they seek to prevent Members *ex ante* from engaging in certain conduct. Thus, the implications of such claims are obviously more far-reaching than "as applied" claims since "as such" claims potentially cover all instances of application of the measure and not only the ones identified by the complaint. Consequently, a panel must not lightly assume the existence of a "rule or norm" constituting a measure of general and prospective application. If a panel were to do so, it would act inconsistently with its obligations under Article 11 of the DSU to make an objective assessment of the matter before it.[5]

12. When an "as such" challenge is brought against a measure that is expressed in the form of a written document, such as a law or regulation, there would, in most cases, be no uncertainty as to the existence or content of the measure that has been challenged. The situation is different, however, when a challenge is brought against an alleged rule or norm that is said not to be expressed in the form of a written document. In such cases, the very existence of the challenged rule or norm may be uncertain. Accordingly, particular rigour is required on the part of a panel to support a conclusion as to the existence of a rule or norm. A panel must carefully examine all concrete evidence regarding the existence of the purported rule or norm in order to determine whether or not it can be challenged as such.[6]

[2] First written submission of the United States, para. 14.
[3] Appellate Body Report, *US – Zeroing (EC)*, paras. 187-188.
[4] Appellate Body Report, *US – Zeroing (EC)*, paras. 190-193.
[5] Appellate Body Report, *US – Zeroing (EC)*, paras. 189 and 196.
[6] Appellate Body Report, *US – Zeroing (EC)*, paras. 197-198.

13. There is thus a distinction between the *existence* of a measure and the *content* of a measure.[7] An enquiry into whether or not a measure *exists* should include all the evidence: Obvious matters to consider are the author, nomenclature, date of adoption, procedure of adoption, place of adoption, method of record and method of publication of the alleged measure.

14. Without prejudice to the question as to whether there is a violation of the relevant agreements, the EC is not necessarily convinced that the allegations of the United States in its first written submission could lead to an "as such" finding. This is particularly the case with the US argumentation concerning or relating to the alleged "denial of or failure to grant import licenses" (US claims A, B, C, and part of K and L). The foundation of these claims is an alleged practice of the Turkish administration not to issue the Certificates of Control. This practice is allegedly proven by the "Letters of Acceptance", which apparently are not publicly available documents but rather internal documents of the Turkish administration. Reference is also made to oral instructions given to officials.[8] It would seem to the EC that on the basis of the facts before the Panel, there may rather be a series of "as applied" measures (or a practice), which the US is inviting the Panel to construe as a measure and condemn in "as such" terms.

III. THE DEFINITION OF AN IMPORT LICENSE

15. Article XI:1 of the *GATT* does not define what is an import license. Neither does the *Agreement on Agriculture* define this notion. The EC considers that Turkey rightly draws the attention of the Panel to Article 1.1 of the *Agreement on Import Licensing Procedures*, where import licensing is defined as

> administrative procedures[1] used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member.

[1] Those procedures referred to as "licensing" as well as other similar administrative procedures.

16. Although the definition is given for the purposes of that agreement, the EC considers that it provides useful context for the interpretation of the same notion under the *GATT* and the *Agreement on Agriculture*. This definition makes an important distinction between administrative procedures for the operation of import licensing regimes and those of exclusively customs purposes. As the footnote to Article 1.1 of the *Agreement on Import Licensing* demonstrates, the formal name or title of the procedure and/or document is not determinative. It is the purpose of the procedure that one has to examine in order to ascertain whether it amounts to an import licensing regime or not.

17. In order to definitely escape being considered an import licensing regime a given administrative procedure required to be followed prior to importation should be confined to "customs purposes". This in turn requires an analysis of what "customs purposes" means. Without trying to define the concept in an exhaustive way, the EC considers that it would *a priori* be difficult to

[7] Appellate Body Report, *US – Zeroing (EC)*, para. 203: "… the Panel did not, in its analysis, clearly distinguish between the issue of ascertaining the ***existence*** of the challenged measure, which is especially important when unwritten measures are at issue, ***and the separate examination*** of its consistency with the relevant provisions of the covered agreements."

[8] First written submission of the United States, para. 36.

consider a procedure that involves e.g. product safety checks or SPS measures within the notion of "customs purposes".

18. The EC draws the attention of the Panel to the fact that the US is also claiming violation of the *Agreement on Import Licensing.* It is arguable that the *Agreement on Import Licensing* relates more specifically to the matter before this Panel than the *GATT* and the *Agreement on Agriculture.* Therefore in accordance with the Appellate Body report in *EC – Bananas*[9] the EC invites the Panel to consider whether the alleged violations of the *Agreement on Import Licensing* should be considered first before the alleged violations of Article 4.2. of the *Agreement on Agriculture* and the *GATT*.

IV. THE RELATIONSHIP BETWEEN ARTICLE XI OF GATT AND ARTICLE 4.2. OF THE AGREEMENT ON AGRICULTURE

19. Referring to findings of previous panels, the United States submits that where a measure with respect to agricultural products is inconsistent with Article XI:1 of the *GATT*, it is necessarily inconsistent with Article 4.2 of the *Agreement on Agriculture*.[10] This argument is advanced under all three main sections of the US written submission i.e. in relation to the alleged denial of import licenses, the claims relating to Turkey's tariff rate quota requiring domestic purchase and the two parts of the alleged system read in conjunction.

20. The EC agrees with the US that there is a general systemic link between the two provisions. However, the EC would like to point out that, apart from the footnote in Article 4.2 of the *Agreement on Agriculture* in which reference is made to quantitative import restrictions, no automatic link has been made in the text of these provisions. The EC therefore considers that caution should be exercised in concluding that the violation of Article XI:1 of the *GATT* would necessarily and in all circumstances lead to the violation of Article 4.2. of the *Agreement on Agriculture*.

21. If the Panel were to conclude that the Turkish Certificate of Control is an import license and that the matter would consequently be examined first under the *Agreement on Import Licensing*, there is a further systemic question on the order of analysis of the Turkish measures under the relevant agreements. It is arguable that the *Agreement on Agriculture* should be considered more specific in relation to the *GATT* in a situation where the import of a particular agricultural product is at stake. Consequently, in accordance with the Appellate Body report in *EC – Bananas III*[11] it is arguable that the alleged violation of Article 4.2. of the *Agreement on Agriculture* should be considered first before the alleged violations of the *GATT*.

V. ARTICLE III:4 VS. ARTICLE XI:1 OF THE GATT

22. In respect of the Turkish TRQ system the US considers that it violates Article III:4 of the *GATT*. In the alternative, the US submits that the system violates Article XI:1 of the *GATT*.

23. Article XI:1 of the *GATT* states that

> No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party <u>on the importation</u> of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party. [emphasis added]

[9] Appellate Body Report, *EC – Bananas III*, paras. 202-204.
[10] First written submission of the United States, claims B, I and L.
[11] Appellate Body Report, *EC – Bananas III*, paras. 202-204.

24. Article III:4 of the *GATT* in turn states that

> The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product. [emphasis added]

25. In principle these two provisions regulate two distinct situations i.e. prohibitions or restrictions on importation i.e. "border measures" (Article XI:I) on the one hand and, prohibition of discrimination once the product has been imported into the territory of a WTO member country i.e. "internal measures" (Article III:4) on the other hand. Therefore, in principle Article III only applies to internal measures, not border measures and, *vice versa*, Article XI:1 only applies to border measures but not internal measures.

26. However, it is not always easy to distinguish an internal measure from a border measure. The Ad Note to Article III aims at clarifying this borderline:

> Any internal tax or other internal charge, or any law, regulation or requirement of the kind referred to in paragraph 1 which applies to an imported product and to the like domestic product and is collected or enforced in the case of the imported product at the time or point of importation, is nevertheless to be regarded as an internal tax or other internal charge, or a law, regulation or requirement of the kind referred to in paragraph 1, and is accordingly subject to the provisions of Article III.

27. Consequently, a prohibition or a restriction of the import of a given product that fails e.g. to meet an intended public health or consumer protection requirement which also applies to domestic products is to be examined under Article III, not under Article XI.

28. However, in certain circumstances the same measures can be found to fall within the scope of both Article III:4 and XI and, therefore, they may be examined as both border measures and internal measures at the same time depending on which aspects of the measures are emphasised. This is illustrated by the Panel ruling in *India – Autos*, where the Panel considered that India had acted inconsistently with Article III:4 by imposing an obligation on automotive manufacturers to use a certain proportion of local parts and components in the manufacture of cars and by imposing an obligation to offset the amount of their purchases of previously imported kits and components, already on the Indian market, by exports of equivalent value. However, the Panel also found a violation of Article XI:1 due to India imposing an obligation on automotive manufacturers to balance their importation of kits and components with exports of equivalent value.[12] Consequently, where a border measure inconsistent with Article XI:1 is used to favour domestic production, it may also violate Article III of the *GATT*.

29. The EC would also like to point out that an illustrative list of trade-related investment measures (TRIMs) that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of *GATT* and the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of *GATT* is contained in the Annex to the *TRIMs Agreement*.

[12] Panel Report, *India – Autos*, para. 8.1.

30. The EC considers that *a priori* the domestic purchase requirement of the TRQ system would seem to fall within the scope of Paragraph 1(a) of Annex 1 of the *TRIMs Agreement*.

VI. THE ABOLITION OF TURKEY'S TRQ REGIME

31. In its defence Turkey states that the legislative framework providing for the TRQ regime is no longer in force. Consequently Turkey has made a request that the Panel refrain from making findings on the measures related to Turkey's TRQ regime as no longer in force. Or, should the Panel consider making findings necessary for purposes of securing a positive solution to the dispute, not to make any recommendation to the Dispute Settlement Body (DSB).

32. In these circumstances the EC does not consider it necessary to examine more in detail the expired Turkish TRQ regime. The EC only notes that should the Panel consider it necessary to make findings on the TRQ regime to secure a positive solution to the dispute, the EC agrees with the Turkish alternative position that there would not be a need to make any recommendation to the DSB.

VII. CONCLUSION

33. In the light of the foregoing considerations, the European Communities invites the Panel to:

- carefully examine the existence of a "rule or norm" constituting a measure of general and prospective application
- consider the order of analysis of the relevant agreements in the light of the Appellate Body Report in *EC – Bananas III*
- consider that where a border measure is used to favour domestic production, it violates also Article III of the GATT
- refrain from making any recommendations to the DSB on the Turkish TRQ regime.

34. The European Communities hopes that the preceding observations will prove useful in the deliberations of the Panel and reserves its right to make further observations in the oral hearing.

ANNEX B

ORAL STATEMENTS BY THE PARTIES AND THIRD PARTIES AT THE FIRST SUBSTANTIVE MEETING

ANNEX B-1

EXECUTIVE SUMMARY OF THE OPENING ORAL STATEMENT BY THE UNITED STATES AT THE FIRST SUBSTANTIVE MEETING
(17 November 2006)

1. In its first submission, the United States made out a *prima facie* case that Turkey has breached several provisions of the GATT 1994 and the WTO Agreements, including with respect to barriers to importation as well as to discrimination against imported rice. For example, the United States demonstrated that Turkey has maintained a WTO-inconsistent domestic purchase requirement (DPR) as part of its tariff rate quota (TRQ) system. To import rice under the TRQ and obtain a lower rate of duty, an importer must purchase substantial quantities of rice from the Turkish Grain Board (TMO) or Turkish producers and producer associations in order to obtain an import permit from Turkey's Foreign Trade Undersecretariat (FTU). And only domestic rice qualifies an importer to obtain this advantage – imported rice does not receive this advantage. Turkey's domestic purchase requirement treats imported rice less favorably than domestic rice, thereby breaching Article III:4 of the GATT 1994.

2. Although the DPR makes it very expensive to import rice, importers have no alternative but to import rice under the TRQ because Turkey's Ministry of Agriculture and Rural Affairs (MARA) fails to grant licenses to import rice at the over-quota rates of duty. Through the unpublished "Letters of Acceptance," Turkey's Minister of Agriculture repeatedly accepts recommendations from his staff to "delay" the start date of the period in which such licenses, or "Certificates of Control," will be granted, thereby ensuring that rice trade occurs under the TRQ. When even the TRQ is closed during Turkey's annual rice harvest, no rice importation can occur. Turkey's denial of Certificates of Control outside the TRQ regime is a prohibition or restriction on importation that breaches Article XI:1 of the GATT 1994.

3. Turkey has denied the US claims but has essentially ignored the extensive factual evidence presented by the United States and, despite all evidence to the contrary, has asserted that Turkey's rice regime actually provides an *advantage* to foreign rice producers over Turkish rice producers. Turkey has failed to rebut the *prima facie* case made by the United States.

Definition of Import License

4. First, Turkey claims that the Certificate of Control is not an import license and hence is not subject to the provisions of the Import Licensing Agreement and other provisions, because the Certificate "amount[s] to administrative forms that are required exclusively for '*customs purposes*'." In its first submission, Turkey sets forth its proposed criteria for when a document is exclusively for customs purposes (and hence should not be considered an import license). Turkey then asserts that, since the Certificates of Control may be used for customs purposes, they are not licenses but rather official documents for customs purposes.

5. This argument is unpersuasive. The fact that a document is necessary to clear customs does not mean it is not an import license. Indeed, import licenses will be used for customs purposes – that is the very nature of an import license since importation cannot occur without it. The real question is what else is the document used for. Here, the Certificate of Control is used to control importation – not just in the customs sense, but in the sense of a restriction or ban on importation. The Certificate of Control is not even a customs document in the most basic sense – it is very revealing that the Certificate of Control is approved by MARA, not by Turkish Customs.

6. Second, the Certificate of Control is an import license even under Turkey's standard. In its submission, Turkey acknowledges that the import permit required by FTU for importation under the TRQ is an import license. Yet a side-by-side comparison of the elements required by MARA for the Certificate of Control and those required by FTU for the import permit reveal a remarkable degree of similarity. Accordingly, under Turkey's own logic, there would be no reason to exclude the Certificate of Control from Import Licensing Agreement disciplines on the basis that it contains customs-related information.

7. Third, a Member cannot shield a measure from coverage under the Import Licensing Agreement or other provisions by including customs-related information in the license application and then claiming it is no longer an import license. The footnote to the definition of "import licensing" in the Import Licensing Agreement makes clear that, regardless of how a Member characterizes particular administrative procedures, such procedures are still considered "import licensing" if they satisfy the criteria in Article 1 of the Import Licensing Agreement.

8. The addition of customs-related information in the Certificate of Control does not change the fact that the Certificate is part of Turkey's requirement for the submission of an application or other documentation as a prior condition for importation, and approval constitutes formal permission from MARA (not Customs) to import rice into Turkey. In other words, the Certificate is an import license within the definition in Article I of the Import Licensing Agreement.

Over-Quota Imports and the Issuance of Certificates of Control

9, In its first submission, the United States made a *prima facie* case that Turkey's denial of import licenses outside the TRQ is in breach of Article XI of the GATT 1994 because Turkey prohibits or restricts imports at the over-quota rate through the use of import licenses or other measures. In making its case, the United States presented a large amount of documentary evidence demonstrating that Turkey does not issue Certificates of Control, which are necessary to import rice outside the TRQ. The United States presented examples of "Letters of Acceptance" signed by Turkey's Minister of Agriculture. Through these documents, the Minister directs MARA officials not to grant Certificates to protect the domestic rice industry. The United States presented examples of correspondence between Turkish importers and MARA, including several letters from MARA rejecting importer requests for Certificates. In one letter, dated May 1, 2006, a Turkish government official admitted that the government did not have authority under Turkish law to grant Certificates. And the United States presented Minister Tuzmen's March 24, 2006 letter to USTR Portman, which was issued just after the DSB established the panel in this dispute and which promised that Turkey would issue Certificates "as of April 1, 2006." Apparently, MARA was not in agreement with the contents of Minister Tuzmen's letter, as evidenced by the May 1 rejection letter referenced above. The rejection letter was completely consistent with the guidance provided in the unpublished Letter of Acceptance that was operative at the time.

10. As the United States has met its burden to make out a *prima facie* case that Turkey is in breach of Article XI:1 of the GATT 1994, it is now up to Turkey to rebut the US case. Turkey has not done so. Turkey has not contested the authenticity of any of the documents submitted by the United States. Moreover, Turkey has not provided any documentary evidence to rebut their contents. Instead, Turkey merely asserts, without any substantiation, that contrary to the express terms of the Letters of Acceptance, it has been granting Control Certificates at the over-quota rates of duty. In the *US – Wool Shirts and Blouses* dispute, the Appellate Body noted it was "difficult, indeed, to see how any system of judicial settlement could work if it incorporated the proposition that the mere assertion of a claim might amount to proof."

11. Instead of attempting to rebut the US arguments directly, Turkey attempts to dismiss the Letters of Acceptance as "informal internal documents," documents that are "never enforced" and

cannot be enforced by the courts, "unreliable evidence of the real intention and trade policies of Turkey in relation to rice importation", and "inadmissible evidence" that cannot be reviewed by this panel. In addition, Turkey dismisses the rejection letters sent to importers by MARA and the court documents as nothing more than "a natural component of the interaction between any WTO Member's administration and its business community." While the United States certainly understands why Turkey would like the Panel to ignore these documents, the fact is they are evidence that cannot be ignored. And whether they are leaked or internal or enforced by the courts is irrelevant. The simple fact is they show that Turkey decided not to issue Certificates of Control, thus demonstrating that the Certificates are discretionary import licenses (and therefore an import restriction as such) and that Turkey is using them in practice to restrict imports.

12. Turkey's arguments that the Letters of Acceptance are confidential, unenforceable and disregarded by the judiciary are contradicted by the fact that Turkey tried to use these documents in Turkish court to justify its denial of Control Certificates to an importer and, in fact, relied upon the documents in court as its sole source of legal authority for the denial. It is difficult to understand how the Letters are an unreliable source of the intentions of Turkish trade policy when counsel for MARA argued before the court that MARA did not have authority under Turkish law to grant Certificates to the importer under the terms of those Letters, and that the Letters were adopted in order to protect domestic rice producers against foreign competition.

13. In lieu of documentary evidence, Turkey has produced a chart which purports to show that Turkey is granting Certificates of Control outside the TRQ, but which raises additional questions. US export data and Turkish data on Control Certificates with respect to US rice imports vary significantly. For example, Turkey claims that through September 21, 2006, MARA has granted Certificates covering the importation of over 400,000 tons of US rice, whereas US trade data puts the volume of US rice exports to Turkey in 2006 at just under 18,000 tons through October 26. Further, even under Turkey's own chart, at least 96 per cent of rice approved in 2004 and 90 per cent of rice approved in 2005 was for entry under the TRQ, for which domestic purchase is required. As it is much more expensive to import under the TRQ, it is clear that such an overwhelming majority of importers would only "choose" to import rice under the TRQ if there were severe restrictions or a ban on importing at the over-quota rates.

14. Turkey also claims that the Letters of Acceptance are not being enforced, as evidenced by the fact that MARA is granting Certificates of Control to importers who purchase domestic rice under the TRQ regime. If Turkey is requiring the Certificates to import under the TRQ regime, the United States thanks Turkey for that clarification. However, that information is irrelevant to the question of whether Turkey is granting the Certificates, and therefore blocking importation, outside the TRQ. The Letters only purport to suspend the granting of Certificates to importers who want to import at the over-quota rates without domestic purchase. They do not address whether the Certificates are granted under the TRQ regime. In addition, this clarification only deepens our concern with respect to the WTO-inconsistency of the DPR because, if what Turkey says is correct, an importer that wants to import rice under the TRQ will have to approach four different Turkish government agencies – TMO, FTU, MARA, and Turkish Customs – and obtain two different import licenses in order to effectuate the importation.

15. With respect to the ban on the issuance of Control Certificates at the over-quota rates, even if Turkey could substantiate that it is not enforcing the Letters of Acceptance, that is not a bar to this panel making a finding of WTO-inconsistency concerning them. A measure may still be found WTO-inconsistent even if it is not being enforced, as was the case in the *US – 1916 Act* dispute. Furthermore, even if Turkey were issuing some Certificates, that would not alter the fact that they constitute discretionary import licensing and an import restriction contrary to Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture.

Domestic Purchase Requirement

16. With respect to the DPR, Turkey contests that (1) the DPR is a measure "affecting [the] . . . internal sale, offering for sale, purchase, transportation, distribution or use" of domestic and imported rice, and (2) that the DPR treats imported rice less favorably than domestic rice. Turkey's rationale is that importers can freely import rice outside the TRQ and that the TRQ modifies conditions of competition so that imported products are actually treated more favorably than domestic products. Turkey has failed to rebut the US *prima facie* case on both issues.

17. With respect to the first issue, the DPR directly affects the conditions of competition between domestic and imported rice. Only domestic rice satisfies the purchase requirement in order to import rice into Turkey under the TRQ. Thus, domestic rice has an advantage in the marketplace that imported rice does not have, and is more attractive as a result. Turkey claims that the United States has not satisfied the "affecting" standard because importers can import rice into Turkey outside the TRQ where domestic purchase is not required. Even if that were true, it does not erase the discrimination against imported rice.

18. In this respect, a Member's requiring the sourcing of domestic goods as a condition to receive a benefit has long been recognized as inconsistent with Article III:4 of the GATT 1994. In 1958, the GATT panel in *Italian Discrimination Against Imported Agriculture Machinery* found an Italian law that conditioned the receipt of special credit terms for farmers on the purchase of domestic agricultural machinery to be in breach of Article III:4. And the *India – Autos* panel found an Article III:4 breach where India's local content requirement for automobile manufacturers created an incentive to purchase and use Indian-origin parts and components and, thus, a disincentive to use like imported parts and components.

19. On the issue of whether the DPR treats imported rice less favorably than domestic rice, Turkey argues that the TRQ system actually provides foreign rice producers with an advantage over Turkish rice producers in selling their rice in Turkey. However, Turkey completely ignores the costs stemming from the DPR in its analysis. The large cost from domestic purchase more than offsets any alleged cost savings resulting from the preferential rates of duty realized by importers under the TRQ. It hardly matters that one ton of US rice will allegedly be a few dollars cheaper than one ton of Turkish rice if one fails to account for the fact that, in order to import that one ton of US rice into Turkey, the importer needs to purchase two tons of Turkish rice at a cost of several hundred additional dollars.

Restrictions on Who May Import Rice Under the TRQ Regime

20. Turkey claims that anyone can import rice under the TRQ. While it is true on the face of the regulation that this is a theoretical possibility, Letter of Acceptance 1795 confirmed that Turkey only permits entities that purchase paddy rice to import rice under the TRQ. Practically speaking, only millers or those with milling capacity would purchase paddy rice. Consumers, wholesalers, retailers, and other distributors are unlikely to have milling capacity and, thus, would not be able to "take advantage" of being able to import under the TRQ. Even if TMO would allow entities to purchase milled rice in order to satisfy the DPR, the TRQ regime would still exclude much, if not all, of the non-milling community from importing rice under the TRQ, as restaurants and retailers that might be interested in importing milled rice would be dissuaded by the high purchase and storage costs. For these reasons, the eligibility criteria for domestic purchase under the TRQ also are inconsistent with Article XI of the GATT 1994.

Measures That Have Allegedly Expired

21. Lastly, Turkey argues that the measures comprising its TRQ regime are no longer in force and, thus, the panel should refrain from making findings with respect to that regime or, if it does make such findings, should not make any recommendations to the DSB regarding those measures. The United States disagrees that the Panel should refrain from making findings and recommendations and further disagrees that the measure is no longer in force.

22. The text of the DSU, as clarified by past panel and Appellate Body reports, makes clear that if a measure exists at the time of consultations and panel establishment, it has not expired for purposes of WTO dispute settlement. In this dispute, the DSB established this panel with standard terms of reference to examine the matter raised by the United States on March 17, 2006. The TRQ regime allegedly "expired" more than four months later. Therefore, the TRQ regime had not "expired" at the time of consultations and panel establishment, and the Panel is charged by the terms of reference and Article 3.3 of the DSU to issue findings with respect to the consistency of the measures comprising Turkey's TRQ regime with the relevant provisions of the covered agreements and make recommendations in order to resolve the dispute.

23. The reports cited by Turkey respect the distinction between measures that expire prior to consultations and panel establishment and measures that expire after panel establishment. In *US – Certain EC Products* and *Chile – Price Band System*, the panels declined to make findings on measures that expired prior to panel establishment. With respect to *Dominican Republic – Import and Sale of Cigarettes*, Turkey states that the panel did not find it necessary to make finding with respect to a measure that expired during the course of panel proceedings, but failed to note that the Appellate Body disagreed with the panel and recommended that the Dominican Republic bring its measure into conformity with its WTO obligations to the extent that it had not already done so.

24. Further, it is not clear to the United States that the TRQ regime ceased to exist on July 31, as Turkey claims, given the number of unpublished documents that Turkey issues with respect to the rice trade. Moreover, Turkey claimed that the TRQ regime "expired" in 2003, 2004, and 2005 and yet the measure resurfaced a few months later. Therefore, the United States believes that it is critical for achieving a definitive resolution of this matter that, if the Panel were to make adverse findings in this dispute, it also issue recommendations that Turkey bring its measures into conformity with its WTO obligations.

ANNEX B-2

**CLOSING ORAL STATEMENT BY THE UNITED STATES
AT THE FIRST SUBSTANTIVE MEETING**
(9 November 2006)

1. Thank you, Madam Chair, members of the Panel, and members of the Secretariat. We would like to thank you for your attention and work on this dispute, as demonstrated over the past two days. As we conclude this first panel meeting, I do not intend to re-state the arguments we made yesterday, but would like to highlight a few additional points that we observed over the past two days.

2. First, the United States believes that the discussion has further clarified that the Certificate of Control is not a document for customs purposes. An importer makes its application for a Certificate of Control to Turkey's Ministry of Agriculture (MARA), not Turkish Customs. Second, an importer needs to apply for a Certificate from MARA, and receive approval, well before the shipment is presented to Turkish Customs. Turkey clarified that this was the case in paragraph 6 of its oral statement when it stated that "[o]nce approved, the Certificate of Control is a guarantee for the importer that all elements and requirements needed to clear customs are present and will allow importation ... *The importer will then feel confident to conclude all necessary business engagements for purposes of importation*." In other words, the Certificate of Control is a document that the importer needs to ensure it can obtain before it finalizes any contracts for the importation of rice. Third, when an importer has not received MARA's approval of a Certificate of Control, the shipment will not be cleared through Customs. This is apparent from the experience of Torunlar, a Turkish rice importer which signed rice purchasing contracts prior to receiving MARA's approval of a Control Certificate, and had to file suit in Turkish court to force MARA to issue the Certificate so it could move the rice out of bonded warehouses.

3. Turkey has argued that anyone can import rice under the TRQ but, until yesterday, ignored the fact that, as a practical matter, only millers or packers would have the ability or desire to purchase paddy rice. At yesterday's panel meeting, Turkey conceded that it was unaware of any restaurants or retailers that would want to purchase paddy rice. We agree with Turkey's assessment. Given that purchasing paddy rice is a condition for importing under the TRQ, it follows that no restaurant or retailer would utilize the TRQ. Narrowing the eligibility criterion from purchasing *rice* to purchasing *paddy rice* was thus used by Turkey to limit the class of persons or firms that would be able to import, thereby demonstrating an additional restriction on importation for purposes of Article XI:1.

4. The United States understands that Turkey intends to provide information that it has been granting Certificates of Control outside the TRQ. In this regard, the United States notes that, under the terms of a bilateral agreement between the European Union and Turkey, the European Union has an annual quota of 28,000 tons of milled rice. Under the quota, importers are permitted to import milled rice from the EU, primarily from Italy, on a duty free basis throughout the year without being subject to any of the prohibitions and restrictions that the United States has raised in this dispute. We realized that this was the case after discussing this matter with EU rice traders, who were unaware of the problems that exporters from the United States, Egypt, and other WTO Members were experiencing in shipping rice to Turkey. The United States is uncertain whether Turkey requires importers of EU rice to obtain Certificates of Control since EU rice imports are "green-lighted" under the terms of the bilateral agreement. If Turkey does require importers of EU rice to obtain such Certificates, this raises further questions about the data presented by Turkey in Annex 20.

5. According to Turkish import data, Turkey imported approximately 25,000 and 32,000 tons of rice from the European Union in 2004 and 2005, respectively. Yet according to Annex 20, Turkey only granted Certificates of Control for approximately 7,000 tons of out of quota rice in 2004 and

approximately 24,000 tons of out of quota rice in 2005. If Turkey is correct that Certificates of Control are only valid for one year – so Certificates obtained in prior years could not account for much of this apparent shortfall – this raises the question as to where EU rice imports can be found in Turkey's chart and, if not, whether importers of EU rice need to obtain Control Certificates. The United States looks forward to Turkey's clarification of this issue.

6. The United States would conclude by stating that, for the reasons above as well as the arguments the United States has raised in its first submission and at this week's meeting of the panel, Turkey has not produced evidence and argument to rebut the evidence and argument of the United States. As clarified by the Appellate Body in its report in *US – Wool Shirts and Blouses*, Turkey has therefore failed to rebut the US *prima facie* case.

7. Madam Chair, this concludes our closing statement. Again, we would like to thank you, the members of the Panel, and the Secretariat for your efforts. We look forward to answering your questions in writing and seeing you at the next meeting of the panel in January.

ANNEX B-3

OPENING AND CLOSING ORAL STATEMENTS BY TURKEY AT THE FIRST SUBSTANTIVE MEETING
(8-9 November 2006)

Ms. Chairwoman, distinguished Members of the Panel,

1. Turkey would like to express its gratitude to all three panellists for having accepted to serve on this Panel and to assist in the resolution of this dispute.

2. Turkey welcomes the opportunity to submit orally its views at this first meeting of the Panel. Turkey has already provided a comprehensive rebuttal to the claims made by the United States. In this statement, Turkey wishes merely to outline its legal arguments, its submission on the facts and its conclusion that the regime for the importation of rice into Turkey is fully compatible with WTO rules.

3. This oral statement addresses a number of factual and legal considerations related to: the Certificates of Control; the expired Tariff Rate Quota (TRQ); the TRQ domestic purchase requirement; and a number of systemic and general considerations related to trade in rice.

4. Turkey's Certificates of Control are not import licenses. They have never been applied as an import licensing instrument. The Certificates of Control have never functioned as import restrictions or prohibitions in relation to the importation of rice whether at the MFN rates, the applied rates of duty, or within the TRQ.

5. The Certificate of Control is a reference document needed to process the customs clearance of specific consignments of a variety of goods, including rice. The Certificate of Control allows customs authorities to verify, on a single document, all required customs information, including the product's compliance with relevant standards and technical regulations.

6. The Certificate of Control acts as an element of trade facilitation. It provides legal certainty and commercial predictability to importers engaged in rice importation. In fact, once approved, the Certificate of Control is a guarantee for the importer that all elements and requirements needed to clear customs are present and will allow importation (provided, of course, that the consignment imported corresponds to the information supplied and passes the phytosanitary and food safety inspections). The importer will then feel confident to conclude all necessary business engagements for purposes of importation. This element of legal certainty must be seen as a tool of trade facilitation. It provides administrative certainty for importers and avoids possible time consuming and costly procedures at border control.

7. GATT Article XI:1 does not define the concept of "*import license*". Neither is this concept defined by Article 4.2 of the Agreement on Agriculture or by any previous GATT or WTO panel or Appellate Body decision. An element of interpretative guidance appears to be available under Article 1.1 of the Agreement on Import Licensing Procedures, where it is clearly indicated that the submission of an application or other documentation required for "*customs purposes*" falls outside of the definition of import licensing.

8. The "*customs purposes*" of Certificates of Control are evident both *de jure* and *de facto*. In Turkey, as in all WTO Members, the process of importation and customs clearance is more than just compliance with the obligation to pay the applicable duty and other charges. Customs clearance also includes the compliance with all administrative requirements and the fulfilment of "*customs purposes*" such as, *inter alia*: the 'gathering of relevant administrative information by customs

authorities'; the 'customs valuation determination'; the 'origin determination'; the 'monitoring of trade and collection of statistics'; the application and certification of 'quarantine, sanitation and fumigation requirements'; and the 'analysis, inspection and certification'.

9. If all the required information is provided by the importers, and it is shown that the goods comply with all relevant specifications and technical regulations, the Certificates of Control are automatically approved. Individual instances of administrative delay, rejection, or even domestic litigation in relation to the approval (or non approval) of a particular application for a specific Certificate of Control, cannot be used to claim or imply that Turkey adopted and/or applied this instrument as an intentional barrier to trade.

10. The fact that Certificates of Control are used for both MFN and TRQ rice importation stands out as a clear testimony that they are exclusively for "*customs purposes*". In fact, contrary to what the United States argues, imports under the TRQ can only occur if an importer obtains both an import license and a Certificate of Control.

11. Certificates of Control are not import licenses and, therefore, do not fall within the meaning and the scope of the Agreement on Import Licensing Procedures.

12. With respect to the claimed violation of GATT Article XI:1, Turkey believes that the Certificate of Control does not amount to a prohibition or restriction made effective through, in relevant part, "*import licences*" or "*other measures*". Turkey has shown that the Certificate of Control is not an import license.

13. Nor are Certificates of Control *"other measures"*. The United States has failed to show on what grounds Turkey's Certificates of Control can or even should be considered as "*other measures*" for purposes of the application of GATT Article XI. The United States has not shown that there is either *de jure* or *de facto* a "*prohibition*" or "*restriction*" in relation to the alleged 'denial of Certificates of Control to import rice'. As there is no "*restriction*" or "*prohibition*", the nature of the "*measure*" is of no relevance. Measures are only prohibited if they are restrictions or prohibitions.

14. Furthermore, individual rejections in the approval of Certificates of Control have never been instances of restriction (both *de jure* or *de facto*) within the meaning of GATT Article XI:1. The reasons for rejection of individual importers' applications have always been provided and, in general terms, were most often due to missing or wrong information supplied by the importers such as the introduction of the wrong customs code classification, the lack of indication of the chosen customs points of entry, or the wrong origin information.

15. Turkey can provide the approval rates of the applications for Certificates of Control made by rice importers during the period 2003-2006 (for both MFN and TRQ trade volumes). In 2003, 96.73% of the importers' applications were approved. In 2004, this approval rate was 94.37%, in 2005 it was 98.45%, and in 2006 (to date) the approval rate stands at 90.80% of the applications lodged. These figures are clear evidence of the lack of any *de facto* restriction to rice imports obtained through the administration of the Certificates of Control system.

16. With respect to the *de jure* scrutiny, the relevant Turkish law does not impose any 'denial' and does not aim at imposing directly or indirectly any import prohibition and/or restriction. The United States wrongly assumes that the so-called 'Letters of Acceptance' are to be considered as "*laws, regulations, judicial decisions or administrative rulings*" of the kind that can prove an instance of *de jure* "*prohibition*" or "*restriction*".

17. As for the *de facto* scrutiny, Turkey has shown that, in relation to both MFN and TRQ trade, a high number of Certificates of Control were approved (i.e., 2,223 between 2003 and 2006, which

amounts to 2,264,858 tonnes of paddy, brown and milled rice) and large amounts of rice were imported (i.e., 939,013 tonnes of milled rice equivalent between 2003 and 2006). This is convincing and irrefutable evidence that there has never been a general *de facto* '*denial of Certificates of Control to import rice*'. In addition, the claim by the United States that Turkey failed "*to grant Certificates of Control to importers 'at all' for a period of over 2 ½ years and is still not granting them*" is not correct. Turkey has provided clear evidence to the contrary. And, in any event, this *de facto* scrutiny cannot be merely quantitative in nature (i.e., carried-out solely on the basis of the number of approved Certificates of Control). In relation to the data provided, an updated version of Annex 20 to Turkey's First Submission is provided today. While the total figures do not change, the attention of the Panel is drawn to the 2005 'In Quota' and 'Out of Quota' data.

18. Certificates of Control are automatically approved in all instances when importers show full compliance with legal requirements established for "*customs purposes*". Individual instances of non-approval of particular rice importers' applications must be seen as a natural component of the interaction between any WTO Member's administration and its business community and cannot be generalized into a general '*denial of Certificates of Control to import rice*' to show the existence of an "*import restriction*".

19. The TRQ is no longer in force. TRQs were opened in 2004 and 2005, not to protect or distort trade, but rather to achieve the necessary supply of rice into Turkey and to stabilize the domestic market. Very simply, the TRQ provided a tariff advantage to imported rice up to predetermined quantities. Any interested importer could apply for a TRQ licence which was granted if there was compliance with the requirements and conditions set out in relevant Turkish legislation.

20. The TRQ has systematically been allocated on a "*first-come-first-served*" basis and has never discriminated on the basis of country of origin of the rice or nationality/affiliation of the importer applying for a license. The requirements for the application and evaluation procedures of the import licenses have always been clear, transparent and easy to implement for all importers. Similarly, the administrative procedures for licensing have always been simple and user-friendly. All documents required for application have always been published in the relevant legislation. When all application requirements were met, the import licenses have systematically been issued within 5 days.

21. In addition to the import licenses obtained for purposes of in-quota allocation, of course, importers also had to comply with all other customs obligations and requirements, in particular the presentation and approval of the required Certificates of Control. Turkey wishes to emphasize that there is a clear difference between the TRQ import licence and the Certificate of Control. The first instrument is used to facilitate the allocation of the TRQ among importers, while the other is to facilitate customs clearance.

22. The tariff quota system was never meant to act as, and never had, any restrictive or discriminatory effects on trade and rice imports. Rather, the system was voluntary and conferred an advantage to the importers meeting the requirements stipulated in the legislation. Importers have always been free to make use of the system or not.

23. Turkey has shown that the high volumes of in-quota imports and the high numbers of licences which have been issued are testimony to the attractiveness and appeal that the tariff advantage has had in the business determinations made by individual rice importers. This in-quota advantage has always existed in parallel to the ability to import at the less advantageous MFN rates of duty. Again, Turkey has shown that MFN trade has never been prohibited or restricted, both *de jure* and *de facto*.

24. The claim put forward by the United States alleges that the domestic purchase requirement and the eligibility criteria of Turkey's TRQ system '*affect the internal sale, offering for sale, purchase (…) or use*' of imported rice by "*adversely modifying the conditions of competition between domestic*

and imported products" within the meaning of GATT Article III:4. The arguments made by the United States are somewhat misleading and not supported by convincing evidence.

25. In particular, it is wrong and misleading to state that the fulfilment of the domestic purchase requirement by importers "*provides the only way to import rice into Turkey*". Turkey maintains that any importer has always been free to import whatever quantity of rice into Turkey from whatever country at the MFN or applied rate of duty. The regime of importation which was applied within the TRQ was meant to provide an advantage to importers of foreign rice to adequately supply the Turkish rice market. In fact, it is well known that Turkey is a net importer of rice and that imports are essential to stabilize the market (both in terms of price and quantities available).

26. Turkey has shown that the opening of the TRQ always resulted in the modification of the conditions of competition between domestic and imported products *in favour of imported products*. With particular regard to Paragraph 52 of the First Submission by the United States, Turkey maintains that the scenario set out is flawed by the use of the following two wrong assumptions: 1) The cost to the importer cannot be the FOB price, but rather the CIF price; 2) The figure of US$ 1,654 per tonne used by the United States does not represent a correct benchmark of comparison since it should refer to three metric tonnes of paddy rice (i.e., two of domestic produce and one of imported rice). In addition, the TMO price of US$ 650 per tonne cannot represent the actual market price since the share of total domestic production purchased by TMO amounts only to a mere 2.4%, which corresponds to a negligible volume and does not allow TMO to influence the domestic market price. A simple review of the average price dynamics of the Turkish rice market in 2005 shows something completely different from that claimed by the United States.

27. In particular, the calculations carried-out by Turkey indicate that, in the event that paddy rice from the United States was imported at the MFN rate of 34% *ad valorem* (i.e., at the applied rate already set at a much lower level than the bound MFN rate of 45% *ad valorem*, in order to attract imports), its cost amounted to US$ 495 per tonne. If the same type of rice was imported from the United States at the preferential tariff rate of 20% *ad valorem* (i.e., the rate offered for rice imports within the TRQ), it would have cost US$ 444 per tonne. At the same time, the cost of purchase of domestic rice from local producers (based on the average domestic prices for the year 2005) would have been 640 New Turkish Liras, equivalent to US$ 457 per tonne. Therefore, when an importer purchased 1 tonne of Turkish rice under the domestic purchase requirement (on the basis of its coefficients) in order to be allowed, for purposes of benefiting of the TRQ preferential rates, to import 800 kg of paddy rice from the United States, the average cost per tonne would have equalled US$ 451. The domestic purchase requirement, in substance, was altering the conditions of competition between domestic and imported products *in favour of imported products*. What could have been bought domestically at US$ 457 per tonne had become, all of a sudden, cheaper to be purchased through the TRQ regime at a mere US$ 444 per tonne. The competitive advantage for imported rice would have been US$ 13 per tonne.

28. As a further example to that set out in Turkey's First Submission, the data compiled in relation to milled rice imports during the years 2004 and 2005 provide an even better and more compelling overview of the price dynamics. In particular, in 2004, rice imports from the United States at the MFN rate of duty (i.e., 45%) would have cost importers US$ 1,008 per tonne. The cost of importation within the TRQ (i.e., at the 43% rate of duty) would have been, in the absence of any domestic purchase requirements, US$ 994 per tonne. Taking into consideration an average cost of domestic rice of US$ 822 per tonne, the application of the domestic purchase requirement (taking into consideration the applicable coefficients) would have resulted in an average cost of US$ 908 per tonne. This figure is much lower than the average cost of rice imported from the United States at the MFN rate (i.e., US$ 1,008 per tonne) and, most importantly for this case, even lower than the average cost of the TRQ imports, had they occurred without the application of the domestic purchase requirement (i.e., US$ 994 per tonne). In 2004, as well as in 2005, it is clear that the shift in the

conditions of competition was *totally in favour of imported products* and to the detriment of domestically produced rice. This is a further indication that an advantage to imported rice has always been conferred by the TRQ system and its domestic purchase requirement. The extent of the advantage changed due to a number of factors such as US$-Turkish Lira exchange rates, consumers' preferences and/or foreign countries' competitive positions vis-à-vis the various types of imported rice. However, Turkey's objective has always been that of market stabilization, never a "hidden agenda" to distort the market in favour of domestic rice.

29. In fact, Turkey had to pursue, at the same time, two legitimate objectives: the one of greater market supply (through the TRQ) and that of market stabilization (through the domestic purchase requirement). It is clear that a TRQ system without the domestic purchase requirement would have resulted in too great an advantage *in favour of imported products.* This outcome would have also carried negative consequences in terms of the viability and affordability of Turkey's market intervention mechanisms and its ability to comply with WTO obligations in relation to its committed levels of Aggregate Measurement of Support.

30. The domestic purchase requirement partly moderated (or even magnified, as the data for 2004 and 2005 milled rice imports indicate) the advantageous effects, and not the adverse effects as claimed by the United States, that the TRQ had conferred to imported rice. The TRQ did confer an advantage. Its success, in terms of quota utilization, is clear evidence of this. The domestic purchase requirement did not take away this advantage. The domestic purchase requirement must be seen as a fundamental of the TRQ system itself, just like the in-quota and the preferential rates of duty. Turkey maintains that it was fully entitled to decide, in line with its economic policies, the characteristics of the TRQ. For those importers that did not consider TRQ trade advantageous, MFN always remained an option. Turkey has shown that, contrary to what is claimed by the United States, TRQ and MFN rice importation always co-existed.

31. The allegations that the domestic purchase requirement and the eligibility criteria should, in the alternative, be considered a restriction on imports of rice within the meaning of GATT Article XI:1, are legally incorrect and not based on convincing factual evidence. There was never a *de jure* restriction of rice importation into Turkey since nothing in the relevant laws and regulations ever diminished the ability to import at the applied or MFN bound rates of duty. The TRQ regime, and its domestic purchase requirement, never altered or removed the ability of importers to import unlimited quantities of rice from any origin at the applied or MFN bound rates of duty. Furthermore, the TRQ regime acted to confer an advantage to importers of rice at preferential rates which available data show to have been largely used by importers, independently of the country of origin and despite the domestic purchase requirement.

32. The United States alleged that certain requirements, referred as the eligibility criteria, would restrict the categories of importers/traders able to purchase domestic rice for the purpose of importing under the TRQ. Such requirements, according to the United States, constitute an autonomous violation of GATT Articles III:4 and XI:1. Turkey submits that the allegation is wrong and largely based on the erroneous translation and interpretation of Turkey's relevant legislation. Turkey recalls that there is no eligibility requirement in order to be able to purchase domestic rice. On the contrary, any restriction of the categories of eligible purchasers would defeat the purpose and objectives of the TRQ system in that it would diminish the chances that the entire TRQ be allocated and that the market be adequately supplied and, consequently, stabilized. Therefore, Turkey wishes to clarify that the relevant legislation simply provides that domestic rice may only be *purchased* from paddy producers having permission to plant paddy rice, their cooperatives and unions, or from the TMO (as indicated in Turkey's First Submission at Annex 9, Article 5 and Annex 16, Article 5).

33. Turkey also wishes to emphasize that, contrary to the allegations of the United States, the TRQ regime was based on an automatic import licensing system and, therefore, does not fall within

the scope of GATT Article XI. In addition, Turkey maintains that, in the context of an automatic import licensing regime, legal requirements such as the eligibility criteria of the TRQ system must be deemed not to have trade-restrictive effects so long as any person, firm, or institution which fulfils them is equally eligible to apply for and to obtain an import license. This has always been the case in Turkey during the existence of the TRQ system.

34. Turkey turns now to the claims made by the United States in relation to a number of general and systemic considerations related to trade in rice.

35. First, Turkey wishes to recall that, in order to establish the existence of a violation of the TRIMs Agreement, a measure must be inconsistent with the provisions of GATT Article III (or GATT Article XI). The United States has not established that the domestic purchase requirement is inconsistent with GATT Article III:4. Therefore, even if the domestic purchase requirement were to be considered an investment measure related to trade in goods within the meaning of the TRIMs Agreement, the United States has not established that the domestic purchase requirement is, as such, inconsistent with Article 2.1 of the TRIMs Agreement.

36. Second, Turkey rejects the claim that a legal or operational link between the legislative framework for the TRQ regime and MFN trade could aim at seriously restricting market access or even at imposing a seasonal ban and therefore constitute, autonomously, a violation of GATT Article XI:1. The United States bases its argument on the assumption that both the Certificate of Control requirement and the TRQ regime individually breached the obligations set forth in GATT Article XI. However, Turkey has already provided legal arguments and factual evidence showing that there is no *de jure* or *de facto* prohibition or restriction connected with either the Certificates of Control or Turkey's expired TRQ regime. Turkey submits that none of these instruments has ever acted, either individually or in combination with one another, to deter full utilization of the quotas opened within the TRQ regime or to prohibit or restrict MFN trade. In fact, Turkey has shown that, rather than being "economically irrational", the TRQ system generated a substantial advantage to importers of rice, even of rice of US origin and in spite of the domestic purchase requirement.

37. Third, Turkey considers that the United States has failed to properly establish a violation of Article 4.2 of the Agreement on Agriculture. In particular, Turkey has shown that the Certificates of Control are not 'import licenses' within the meaning of the Agreement on Import Licensing Procedures, and that there has never been any 'denial' of 'import licenses' or any *de jure* or *de facto* import prohibition or restriction within the meaning of GATT Article XI:1. Turkey has also shown that its TRQ regime was not based on discretionary import licensing and that it is not correct to claim that non-tariff measures were maintained through state trading enterprises. Turkey therefore believes that the claim put forward by the United States under Article 4.2 of the Agreement on Agriculture should be rejected, both in relation to the individual instruments and in their joint operation. In addition, Turkey wishes to recall that it is well aware of the objectives of Article 4.2 of the Agreement on Agriculture and of the special relation between this article and GATT Article XI:1. However, Turkey does not consider that any automatic link between the two provisions has yet been established. A violation of GATT Article XI:1 does not constitute automatically a violation of Article 4.2 unless it is positively established that the measure at stake falls within and is inconsistent with footnote 1 of Article 4.2 of the Agreement on Agriculture.

38. Fourth, in relation to the alleged violations of certain provisions of the Import Licensing Agreement, Turkey again notes that the United States has based its claims on the incorrect assumptions that (i) the Certificates of Control are, or function as, import licenses and that (ii) the TRQ regime is based on a non-automatic import licensing system. Turkey has shown that the Certificates of Control are not 'import licenses' and the TRQ licences were automatic while the TRQs were in force. These claims should be rejected entirely.

39. Finally, Turkey wishes to draw the attention to the fact that the legislative framework for the TRQ regime, including the domestic purchase requirement, is no longer in force. The measures under consideration were of short legal validity and have expired. In this respect, Turkey notes that it has been previous Panels' and Appellate Body's practice to either refrain from making findings or, when a finding was considered necessary for the positive resolution of a dispute, to refrain from making recommendations on expired measures. On the basis of, *inter alia*, the consideration that Turkey has not renewed the measures in question and has no intention to do so, Turkey considers that further examination of the TRQ regime is not necessary for the successful resolution of the dispute. Turkey recognizes this Panel's full discretion to decide on the specific matter at stake. However, should this Panel consider it necessary to make a finding, Turkey respectfully requests the Panel not to make any recommendation.

40. In conclusion, the United States has not shown either in law or in fact that the regime for the import of rice into Turkey is incompatible with Turkey's obligations under the WTO Agreements.

41. As a result of the discussions entertained during the oral hearing, it has become clear that a greater amount of evidence is needed to adequately understand the various issues at stake. Turkey believes that the further documents which it will submit will clearly show to the Panel and the United States that there has been no distortion of rice imports through the Certificates of Control or through the operation of the domestic purchase requirement in the TRQ.

42. Turkey has shown that Certificates of Control have been approved regularly by MARA during the whole 2003-2006 period (i.e., the period during which the United States claims that no Certificates of Control were approved because of the "Letters of Acceptance"). These Certificates have been approved for both in-quota and over-quota volumes of trade and even to the benefit of the individual trader (Torunlar) who took legal action against MARA and referred to by the United States in its Submission at paragraphs 28 to 31.

43. Turkey also believes that the oral hearing has been able to address misunderstandings on the duration of validity of approved Certificates of Control as well as the possibility for the multiple use of a single Certificate of Control up to the full amount for which it was approved. The law clearly shows that the length of validity of an approved Certificate of Control for rice imports is, and always has been, 12 months from the date of approval. The law also shows that, for rice importation, multiple uses of a single approved Certificate of Control are allowed.

44. This fundamental misunderstanding of Turkish law underlies much of the claim by the United States. If a Certificate of Control is valid for 12 months from the date of approval, the issue before this Panel is not a question of when the Certificates of Control were approved. As they can be used anytime within the 12 month period, at any one time there is an abundance of Certificates of Control available to importers. So the core claim made by the United States, that only a limited number of Certificates of Control was approved in any one period and that the Certificates of Control were import licenses, is not relevant. The real issue is how many valid Certificates of Control were in circulation at any one time as, if there were plenty available, they could not have acted as an import restraint.

45. In any event, the United States has not proved to Turkey or to this Panel that there were periods where applications for approval of Certificates of Control were not approved. The United States has merely referred to three specific cases where Certificates of Control were not approved. This is not evidence of a systematic denial of approvals let alone evidence of an import prohibition or even of an import restriction. In fact, the United States has not even made a *prima facie* case.

46. Turkey, on the other hand, has already shown and will further clarify that the volumes for which Certificates of Control were approved far exceeded actual trade. This means that traders

maintained in their possession valid Certificates of Control for larger volumes that they needed for use at anytime during the 12 month period of their validity.

47. The Certificates of Control are not import licenses. They are documents used for trade facilitation and customs purposes. To the extent that they are agricultural products, they are approved by MARA. The information provided on the Certificate of Control is customary information which is required by MARA to fulfil its domestic obligations. However, MARA does work closely with customs authorities for purposes of administering the process of inspection and customs clearance at point of entry.

48. The scope of the information requested by MARA for approval of the Certificate of Control does not change an administrative document used for customs purposes into an import license, as the United States argues. If we were to follow the line of argument put forward by the United States, any document used in relation to importation would be an import license. This is patently not the case. For example: SPS certificates are not import licenses; Certificates of origin are not import licenses; Certificates of compliance with technical regulations are not import licenses. The bringing together of all these individual 'non-import-licenses' into a single document does not suddenly turn that single document into an import license. The United States has not shown which element of the Certificate of Control turns this administrative document into an import license. It has merely asserted that it is an import license. The United States has not made a *prima facie* case and it certainly has not brought any proof before this Panel.

49. The fact that there are similarities in the information required on both Certificates of Control and TRQ Import Licenses is not proof that the Certificate of Control is an import license. An examination of Exhibit 51 of the United States, which lists the similarities, shows nothing sinister. The similarities cited include: a requirement that the customs classification code must be provided, that the product must be described, that the importer must be named, that the importer's tax number must be provided, that the quantity is to be filled in, that the country of origin must be cited, that an indication of where the product was loaded is needed, and finally that the point of entry into Turkey must be indicated. The requesting of this type of information in relation to two different documents for two different purposes is perfectly normal. It even shows that the documents were separate and served different purposes. If they served the same purpose, why repeat all information on both?

50. The United States relies heavily, and ultimately only, on the so-called "Letters of Acceptance". Turkey accepts that "Letters of Acceptance" were written and were in circulation. However, these letters were internal communications aimed at developing policies. These administrative communications never resulted in the adoption of laws or regulations. They were never used to systematically deny the approval of applications for Certificates of Control. And even if, hypothetically, they had been used to limit the approval of Certificates of Control, which Turkey vehemently denies, this is not evidence that there was a measure prohibiting or restricting imports. The same traders had other certificates of control for volumes greater than they needed usable over a 12 month period.

51. The record shows that, despite the "Letters of Acceptance", Certificates of Control were approved. And not only that, Certificates of Control were approved for Torunlar, the domestic litigant relied upon by the United States to show that the Letters did operate as a general restriction. They did not operate as a general restriction. They did not operate as a systematic scheme of import prohibition or restriction, whatever the text of this internal administrative communication actually states. The import statistics clearly confirm this and this will be specifically addressed in Turkey's next submission.

52. The fact that these "Letters of Acceptance" have been used in open court proceedings by MARA in their defence in relation to an individual rejection of an application for a specific Certificate

of Control cannot be considered as evidence of a systemic denial of approval of Certificates of Control or, more importantly, for the purposes of the case by the United States in WTO law, a systemic prohibition or restriction on imports under GATT Article XI.

53. In the course of the oral hearing, the United States has tried to suggest that import licenses for the TRQ were only being issued, in fact, to a limited number of specific traders. The United States has shown no evidence of this, nor has it shown that the alleged limited group of importers that benefited from the TRQ had any specific characteristics. Turkey does not understand the purpose of these suggestions. If, however, the United States is trying to hint at, or suggest, some sort of discrimination on the basis of nationality, Turkey strongly rejects this allegation.

54. As Turkey has stated, a substantial number of traders benefited from the TRQ and were allocated part of the quota. Furthermore, Turkey notes that this allegation is not an allegation in relation to the GATT. It is an allegation in relation to services, namely distribution services, and the United States has not pleaded the GATS in this case. Again, the exact details will be provided in further submissions.

55. The United States has shown figures according to which the cost of import of a single tonne of rice within the TRQ amounts to US$ 1,654. This calculation beggars belief. The fact is that the amount of US$ 1,654 must be divided by three since the importer now holds three tonnes of rice. In addition, Turkey asks the Panel to review in some detail the prices that the United States has submitted to you. For example, in its First Submission, the United States claims that the FOB price for paddy rice is US$ 295 per tonne. In its oral statement, the United States claimed that the CIF price for paddy rice is US$ 260 per tonne. Turkey has not had time to fully examine this issue, but the figures obviously seem to be, at best, inconsistent and, at worst, randomly chosen. As a general point, Turkey observes that the United States is only using extreme examples and does not build its case on general trade statistics, policies or laws.

56. The United States has argued that the deadlines and the re-openings of the TRQ are in and of themselves breaches of GATT Article XI. Turkey fails to understand this argument. Time limits are an inherent part of the management of any TRQ. If time limits are a breach of GATT Article XI, then all TRQs administered by all WTO Members would be incompatible with WTO law.

57. In addition, the very fact that the deadlines of the TRQ were re-opened or extended cannot be a breach of GATT Article XI. Turkey is under the obligation to ensure full utilization of TRQs, if and when it chooses to open them. In any event, the United States has not shown how the extension of the TRQ could have inhibited full utilization. It is a mere assertion not backed up by fact or by law. This leads to the issue of the domestic purchase requirement.

58. The United States again misunderstands the domestic purchase requirements for eligibility to benefit from the TRQ. Turkish law provides that an applicant for a TRQ import license must show that it has purchased a specific quantity of domestic rice. Any operator, domestic or foreign, that has a tax registration number, is entitled to purchase domestic rice from three categories of domestic sellers. These are the paddy producers, the unions and cooperatives of paddy producers, and the TMO. If the operator chooses to purchase from the TMO, the quantity is different from the quantity required if the purchase is from the other two categories. These quantities are clearly set out in the law in a transparent fashion.

59. Once an operator has purchased the required quantity of domestic rice, that operator becomes eligible to apply for an import license under the TRQ. Contrary to what has been alleged by the United States, there are no eligibility criteria in relation to who can be an operator for the purposes of purchasing domestic rice. And thus benefit from the TRQ advantages.

60. Turkey would now like to ask the United States what concerns it has arising from the fact that restaurants and individual consumers are not acting as operators for the purposes of importation of rice into Turkey (who, by the way, were perfectly entitled to purchase domestic rice and, therefore, import within the TRQ). The approach being taken by the United States, and the arguments being used in relation to individual consumers and restaurants, raise questions for Turkey as to the ultimate objective of the United States in making this complaint. Is the complaint designed to cut out a normal and regular part of the value chain in relation to the production, processing and sale of rice? The United States seems to think that the fact that operators are mainly traders and millers is evidence of a breach of WTO law. This is patently not the case.

61. Or is the objective of the United States to get the benefit of the TRQ's lower duty rates without the burden of the domestic purchase requirement? The TRQ is, as Turkey has emphasised, a market stabilization mechanism and the domestic purchase requirement is an integral part of it. The TRQ was a concession which Turkey granted in addition to its bound commitments under its GATT Article II Country Schedule. Turkey has shown that, despite the domestic purchase requirement, the advantage conferred by the TRQ was considerable. It has been quantified in Turkey's pleadings. In fact, evidence shows that traders chose to import through the TRQ system rather than at the MFN or applied rates while both remained available.

62. There is a wide range of other issues that have been raised during this hearing. Turkey will address them in its subsequent pleadings. Turkey looks forward to the written questions from the Panel and thanks the Panel for its contribution to the clarification of the law and the facts underlying this case.

ANNEX B-4

**ORAL STATEMENT BY AUSTRALIA
AT THE THIRD PARTY SESSION**
(9 November 2006)

Introduction

1. In this statement, Australia will canvass a number of issues of legal interpretation.

2. First, the Panel should address the arguments relating to the correct order of analysis before considering whether, for reasons of judicial economy, it is no longer necessary to address some or all of the claims raised.

3. Second, Australia submits that Turkey's alleged denial of Certificates of Control, if established, is inconsistent with the prohibition on non-tariff measures in Article 4.2 of the *Agreement on Agriculture*.

4. Third, Australia will make submissions on the term 'import licence' used in the *Agreement on Import Licensing Procedures* (*Import Licensing Agreement*) and Article XI:1 of GATT 1994.

5. Fourth, if Turkey's Tariff Rate Quota (TRQ) is no longer in existence and there are no continuing measures being applied, the Panel should consider whether it is necessary to make a finding in respect of the claims relating to the TRQ in order to resolve the dispute. Should the Panel decide to make findings on the TRQ, Australia argues that the domestic purchasing requirement is inconsistent with Article III:4 of GATT 1994.

6. Fifth, if the Panel finds that Turkey has adopted a practice of denying Certificates of Control altogether, this would constitute a 'measure of general application' for the purposes of Article X:2 of GATT 1994 and a failure to publish this measure would be inconsistent with Article X:2.

7. Sixth, in relation to Turkey's arguments about the admissibility of certain evidence, Australia notes that all evidence is admissible, but it is for the Panel to determine the weight it is to be given.

Order of Analysis

8. The Appellate Body in *EC – Bananas III* found that the Panel should have applied Article 1.3 of the *Import Licensing Agreement* before considering Article X:3(a) of GATT 1994 since the *Import Licensing Agreement* deals specifically, and in detail, with the administration of import licensing procedures. The Appellate Body noted that if the Panel had adopted this order of analysis, there would have been no need for it to address the alleged inconsistency with Article X:3(a).[1]

9. Australia agrees that, as a general principle, provisions of a more specific agreement should be considered before provisions of a more general agreement where, as in *EC – Bananas III*, the provisions are, "for all practical purposes, interchangeable", being identical in coverage and effect. It is for the Panel to determine whether these criteria are met and, if they are, whether to exercise judicial economy with respect to claims made under the more general agreement. Where claims are based on provisions which are not identical in coverage and effect, each claim should, in principle, be considered.

[1] Appellate Body Report, *EC – Bananas III*, paras. 202-204.

Inconsistency of Turkish measure with Article 4.2 of the *Agreement on Agriculture*

10. Australia submits that Article 4.2 of the *Agreement on Agriculture* and Article XI of GATT 1994 are not identical in coverage and effect, so claims made pursuant to these provisions should be analysed separately.

11. Australia agrees with the EC that, apart from the footnote to Article 4.2 of the *Agreement on Agriculture*, there is no automatic link between the texts of Article 4.2 and Article XI of GATT 1994.[2]

12. Having expressed this caution, Australia considers that under a separate analysis pursuant to Article 4.2 of the *Agreement on Agriculture*, it would be open to the Panel to find that Turkey's alleged denial of the Certificates of Control, if established by the facts, prevents or restricts imports outside the TRQ.

13. Australia agrees with the US[3] that if Turkey has refused to grant Certificates of Control, that would constitute a quantitative import restriction or discretionary import licensing, or fall within the broad category of 'similar border measures other than ordinary customs duties' in footnote 1 to Article 4.2 of the *Agreement on Agriculture*. The measure is therefore 'of the kind' that Turkey may not maintain, resort to, or revert to, and is inconsistent with the prohibition on non-tariff measures in Article 4.2.

Article XI:1 of GATT 1994 – import licence/other measure

14. Australia considers that the Panel should clarify the term 'import licence' under Article XI:1 of GATT 1994, considering its ordinary meaning and in the context of the *Import Licensing Agreement*.

15. Neither Article 1.1 of the *Import Licensing Agreement* nor GATT 1994 defines the term 'import licence'. However, Article 1.1 of the *Import Licensing Agreement* identifies the scope of the Agreement as being concerned with the administrative procedures that are used to implement import licensing. The phrase 'prior condition for importation' in Article 1.1 provides guidance on the meaning of the term 'import licence'. It indicates that the term covers the control of imports.

16. The footnote to Article 1.1 also provides guidance in considering the meaning of 'import licence'. As stated by the Panel in *EC – Bananas III*, the footnote "further defines 'administrative procedures' to include 'those procedures referred to as "licensing" as well as other similar procedures'. Accordingly, irrespective of whether the term 'licensing' is used … administrative procedures are covered by the Licensing Agreement provided that they have a purpose similar to licensing."[4]

17. Turkey's submission[5] that its Certificates of Control deal solely with customs matters - and so are not import licences – gives too great a scope to the carve out for 'customs purposes' and restricts the meaning of 'import licences' beyond that intended by either Article XI of GATT 1994 or the *Import Licensing Agreement*. Australia considers that it would be difficult to consider a procedure that involves product safety checks or SPS measures within the concept of 'customs purposes' under Article 1.1 of the *Import Licensing Agreement* or GATT 1994. The fact that there are elements of a regime which are required for customs purposes does not mean, in and of itself, that the regime falls outside the term 'import licence'. The structure and operation of the regime in practice need to be examined to determine if it has a 'purpose similar to licensing'.

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[2] Third Party Written Submission by the European Communities, 18 October 2006, para. 20.
[3] First Submission of the United States, 20 September 2006, paras. 76-78.
[4] Panel Report, *EC – Bananas III*, para. 7.147.
[5] First Submission by Turkey, 11 October 2006, paras. 47-54.

18. Australia further contends that if the Panel finds that the Certificate of Control is not an 'import licence', as referred to in the *WTO Agreements*, the Panel should consider whether either the Certificate of Control or Turkey's alleged denial of the Certificates is an 'other measure' within the meaning of Article XI of GATT 1994. Such a finding will depend on the Panel's view as to whether the evidence supports the US submission that Turkey has, through use of its Certificates of Control, either acted to prohibit or restrict the entry of rice into Turkey.

Domestic support under Turkey's TRQ

19. Turkey argues that it is not necessary to examine the expired Turkish TRQ regime.[6]

20. Australia notes that the Panel has authority to make findings on measures which are properly within its terms of reference, even where those measures have ceased to exist.[7] However, it is established jurisprudence that a panel only needs to address those claims which must be addressed to resolve the matter in issue in the dispute.[8]

21. Where a measure has been withdrawn, it may often be unnecessary to make a finding on the measure's consistency with the *WTO Agreements*, and panels in the past have generally found it inappropriate to make recommendations on measures which no longer exist.[9] If the TRQ regime has indeed expired, the Panel should consider whether, based on the particular facts of the case, it is necessary to make findings or recommendations on the measure in order to resolve the dispute.

22. If the Panel concludes that elements of the TRQ continue to exist or otherwise decides to make findings on the TRQ, Australia submits that Turkey's imposition of a domestic purchasing requirement under its TRQ regime is inconsistent with Article III:4 of GATT 1994. The only issue between the parties in this regard is whether imported rice is accorded less favourable treatment than domestic rice.

23. Australia notes that WTO jurisprudence supports the view that the imposition of an 'additional requirement' or an 'extra hurdle' on imported products, when compared to like domestic products, constitutes less favourable treatment.[10] In *Canada – Wheat Exports and Grain Imports*, the Panel considered that these 'extra hurdles' need not be onerous in commercial and/or practical terms to be inconsistent with Article III:4 of GATT 1994.[11]

24. Under Turkey's TRQ regime, imported rice cannot be sold in the domestic market unless that importer first purchases a specified quantity of domestic rice. Domestic rice producers are not subject to any such additional requirement. Australia argues that this is an 'extra hurdle' which alters the conditions of competition in favour of domestic rice, and constitutes less favourable treatment for imported products.

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[6] First Submission by Turkey, 11 October 2006, paras. 137-139; Third Party Written Submission by the European Communities, 18 October 2006, para. 32.

[7] Panel Report, *India – Autos*, para. 7.26; Panel Report, *Indonesia – Autos*, para. 14.9.

[8] Appellate Body Report, *US – Wool Shirts and Blouses*, page 19; Appellate Body Report, *US – Lead and Bismuth II*, para. 71.

[9] For example, Appellate Body Report, *US – Certain EC Products*, para. 81; Panel Report, *Chile – Price Band System*, para. 7.112.

[10] Panel Report, *Canada – Wheat Exports and Grain Imports*, para. 6.185.

[11] Panel Report, *Canada – Wheat Exports and Grain Imports*, para. 6.190.

Interpretation of "measures of general application" under Article X:2 of GATT 1994

25. Turkey argues that Article X:2 of GATT 1994 does not apply to the dispute as the Letters of Acceptance are not 'measures of general application' and, because they cannot be enforced, they are not subject to the publication requirement under Article X:2.[12]

26. As the US submission makes clear, the measure at issue is Turkey's alleged blanket denial of Certificates of Control.[13] In Australia's view, this is the 'measure of general application' which is allegedly being enforced, and which, if found to exist, constitutes a 'restriction or prohibition on imports' under Article X:2.

27. If the Panel finds that Turkey has in fact adopted a practice of denying Certificates of Control altogether, Australia argues this could constitute a 'measure of general application' for the purposes of Article X:2, whether or not the Letters of Acceptance themselves can be enforced. Turkey's failure to publish its denial of the Certificates, whether through publication of the Letters of Acceptance or some other instrument, would be inconsistent with Article X:2.

Evidentiary Status of the Letters of Acceptance

28. Turkey submits that the Letters of Acceptance are inadmissible or partial and unreliable evidence of Turkey's intention and trade policies.[14]

29. The *Dispute Settlement Understanding* contains no rules on the admissibility of evidence. As clarified in the Panel report in *EC – Bed Linen*, WTO panels "are generally free to admit and evaluate evidence of every kind and to ascribe to it the weight that they see fit."[15]

30. Australia therefore contends that the Letters of Acceptance are admissible and it is for the Panel to determine the weight to be accorded to such evidence.

Conclusion

31. In conclusion, Australia thanks the Panel for its consideration of the points we have raised.

[12] First Submission by Turkey, 11 October 2006, para. 84.
[13] First Submission of the United States, 20 September 2006, paras. 79-80.
[14] First Submission by Turkey, 11 October 2006, para. 81.
[15] Panel Report, *EC – Bed Linen*, para. 6.34.

ANNEX B-5

**ORAL STATEMENT BY CHINA
AT THE THIRD PARTY SESSION**
(9 November 2006)

1. Madam Chair, distinguished members of the Panel, thank you for providing China with the opportunity to make a statement at this meeting. In this statement, I will focus on three issues.

I. ARTICLE XI:1 OF GATT 1994

2. From the first submissions of the US and Turkey, it's apparent that they have different viewpoints concerning whether Turkey's Certificates of Control is an import license. On this point, China is of the view that, even assuming that the Certificate of Control is not an import license, if it prohibits or restricts the import of rice in practice, it may still constitute an "other measure" which is inconsistent with GATT Article XI:1. Based on the interpretations developed by the panel of the case *India – Quantitative Restrictions*,[1] if an "other measure" subject to the discretion of a government agency and may block certain imports, such measure should be deemed to operate as limitations on imports and is not permitted by Article XI:1.

II. ARTICLE III OF GATT 1994

3. With respect to domestic purchase requirement, the US claims that it violates GATT Article III:4, whereas Turkey denies such claim. Specifically, Turkey argues that with the benefit of lower tariff rate, the domestic purchase requirement actually altered the conditions of competition in favour of imported product, and therefore was consistent with Article III:4.[2] However, in China's view, such line of reasoning seems questionable. Article III deals with the comparison of treatments between the products imported and national products, and has no relation to the level of tariff. If domestic purchase requirement alters the competition conditions to the detriment of imported products and thus violates Article III:4, the violation could not be redressed or offset by the benefit of lower tariff rate.

III. THE APPLICATION OF TRIMS AGREEMENT

4. The US claims that Turkey is in breach of Article 2.1 and Paragraph 1(a) of the Annex 1 of the TRIMs Agreement. Turkey argues that the subject measure is consistent with GATT Article III:4, and therefore does not violate Article 2.1 of the TRIMs Agreement.[3] It seems that Turkey ignores the fact that the US fails to define what a "trade-related investment measure" is and to prove Turkey's measure constitutes a TRIM[4].

5. China wishes to raise its observation in this regard. The TRIMs Agreement is a fully fledged treaty with autonomous legal existence, and it must have its own application scope. Although the TRIMs Agreement does not define what a TRIM is, this term could be interpreted properly according

[1] Panel Report, *India – Quantitative Restrictions*, para. 5.129.
[2] Turkey's first written submission, paras. 95-99.
[3] Turkey's first written submission, paras. 110-113.
[4] TRIM is the abbreviation of "trade-related investment measure", note added by China.

to the principle set forth in Article 3.2 of the DSU. In no case it is proper to bring a measure out of the coverage of TRIMs Agreement under the jurisdiction of it.

IV. CONCLUSION

6. This concludes my presentation. I thank you for your patience.

ANNEX B-6

**ORAL STATEMENT BY EGYPT
AT THE THIRD PARTY SESSION**
(9 November 2006)

Mrs. Chairperson, members of the Panel,

1. I am pleased to appear before you today to present the views of the Arab Republic of Egypt as a third party to this proceeding.

2. As an important producer and exporter of rice, Egypt has a substantial interest in this proceeding. Also, as stated in its third party submission, Egypt is particularly concerned with the interpretation of Article III:4 and XI:1 of the GATT 1994 and of Article 4.2 of the Agreement on Agriculture.

3. In today's statement, Egypt will elaborate on some of the elements raised in its third party submission and discuss certain of the issues raised by other third parties to this proceeding.

Measures at issue

4. In its third party submission, the People's Republic of China submits that the measures challenged by the United States (US) under the title of "regime as a whole" are too broad to meet the specificity requirement of Article 6.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

5. Egypt notes that in its request for the establishment of a panel, the US, after having identified the measures at issue and having referred separately to the denial of, or failure to grant import licenses and domestic purchase requirements, submits claims concerning Turkey's domestic purchase requirements, in conjunction with its denial of, or failure to grant import licenses. Also, in its first written submission, under claims K, L and M, the US refers to the denial of Certificates of Control and the domestic purchase requirements imposed under Turkey's TRQ regime. Under claim L, in particular, the US indicates that Turkey's import licensing regime comprises the TRQ requiring domestic purchase for under-quota imports and the denial of import licenses for any imports at the rate of duty set out in Turkey's domestic schedule.

Measures within the meaning of Article XI:1

6. The US, in its first submission, primarily considers that Certificates of Control are import licenses within the meaning of Article XI:1 of the GATT 1994 even though it also states that they may be considered as "other measures" under this Article. Arguing that Certificates of Control are exclusively used for customs purposes, Turkey contends that they cannot be considered as import licences within the meaning of Article 1.1 of the Agreement on Import Licensing Procedures.

7. Since Article XI:1 does not define the notion of import license, Egypt considers that Turkey is right to refer to the definition set forth in Article 1.1 of the Agreement on Import Licensing Procedures when examining if Certificates of Control should be considered as import licenses under Article XI:1. Egypt is of the opinion that one of the central questions that must be addressed with respect to this issue is whether or not Certificates of Control amount to administrative forms that are required exclusively for customs purposes. In line with the considerations invoked by the European Communities (EC) in its third party submission, Egypt believes that the requirements that must be

satisfied by importers in order to obtain Certificates of Control cannot be considered as exclusively for customs purposes.

8. In the event that Certificates of Control where found not to be import licenses within the meaning of Article XI:1, Egypt considers that it should be examined whether they can be classified as "other measures". Egypt wishes to recall that, in previous dispute settlement proceedings concerning Article XI:1, panels have considered that its reach is very wide and that the expression "other measures" implies a broad scope as to the types of measures that are covered.

"As such" or "as applied" claim

9. The EC, in its third party submission, raises the question of whether the US has raised an "as such" or an "as applied" claim. In light of the findings of the Appellate Body in *US – Zeroing (EC)*, the EC considers that "on the basis of the facts before the Panel, there may be a series of "as applied" measures (or a practice), which the US is inviting the Panel to construe as a measure and condemn in "as such" terms.

10. Egypt wishes to indicate that the distinction between "as such" and "as applied" claims referred to by the EC in its third party submission all concern the Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). While the findings of the Appellate Body and panels rendered within the framework of proceedings concerning the Anti-Dumping Agreement in relation to "as such" and "as applied" cases may be considered by the Panel in this proceeding, Egypt submits that the wording and nature of the provisions referred to by the US in the present proceeding should be borne in mind.

11. Egypt respectfully submits that if the Panel was to determine whether the US claims concern measures within the meaning of Article 3.3 of the DSU, it should examine how they are classified under the Articles referred to in support of their claims by the US. For example, with respect to US claim A, the Panel should determine whether the Certificates of Control are import licenses or other measures within the meaning of Article XI:1.

Expiry of the TRQ regime

12. In its first submission, Turkey indicates that the legislative framework providing for the TRQ regime expired and requested the Panel to refrain from making findings on the measures related to its TRQ regime or, should the Panel consider it necessary to make findings necessary for the purpose of a positive solution to the dispute, not to make any recommendation to the Dispute Settlement Body (DSB). In its third party submission, the EC states that it does not consider it necessary to examine more in detail the TRQ regime.

13. Considering the claims raised by the US with respect to the joint operation of the TRQ regime and the general import regime, Egypt considers it important for the Panel to take into consideration the TRQ regime for its findings to secure a positive solution to the dispute. However, if the TRQ regime is no longer in force, Egypt also considers that no recommendation should be made to the DSB with respect to it.

14. Mrs. Chairperson, members of the Panel, this concludes the third party statement of Egypt. Thank you for your attention.

ANNEX B-7

ORAL STATEMENT BY THE EUROPEAN COMMUNITIES AT THE THIRD PARTY SESSION
(9 November 2006)

Ms. Chairperson, distinguished members of the Panel,

1. The European Communities thanks the Panel for this opportunity to present its views today.

2. In its written submission, the EC invited the Panel to conclude on four points of law:

- carefully examine the existence of a "rule or norm" constituting a measure of general and prospective application
- consider the order of analysis of the relevant agreements in the light of the Appellate Body Report in *EC – Bananas III*
- consider that where an import restriction that falls foul of Article XI has a simultaneous element of favouring the internal sale of domestic, rather than imported, products, it violates also Article III of the GATT
- refrain from making any recommendations to the DSB on the Turkish TRQ regime.

3. In this third party session, we will not develop these arguments much further. However, for the sake of clarity, we will highlight again our main points.

4. This is a very fact intensive case where the parties appear to disagree on many of the facts at stake. The EC does not wish to add to this complication by building any theories based on assumptions of facts. What seems to be clear is that Turkey's TRQ regime has ceased to exist. Under these circumstances, the EC does not consider it necessary to examine more in detail the expired Turkish TRQ regime.

5. The measures still in force, that is, the alleged import licensing system brings forward a very important systemic issue in the light of the arguments presented by the United States. The US in its first written submission refers to the Turkish measures as "an unofficial ban". It appears also that the US case relies at least partially on internal documents of the Turkish administration and reference is also made to oral instructions given to Turkish officials. Egypt in its third party submission considers it irrelevant that the unpublished Letters of Acceptance may not be "laws, regulations, judicial decisions or administrative rulings" within the meaning of Article XI:1 of the GATT. The EC is of the view that the issue is more subtle than as expressed by Egypt as it is important to establish whether a measure exists in the first place. In this respect the fact that a given document has not been published is relevant.

6. As the EC has made clear in its written submission, this is a familiar systemic issue on which the Panel should be particularly vigilant: Is it truly so that there is a system or a regime that is in place or could it be that the system as it stands has possibly been applied in a certain way in certain instances? This subtle but fundamentally important question may make a significant difference.

7. There is also another systemic issue before the Panel, namely the order of analysis of overlapping pleas in law under different provisions of different relevant agreements. The Appellate Body has considered this question in *EC – Bananas III*, where it stated that the agreement more specific to the matter at stake should be examined first.

8. It is of course often a question of judgement as to which agreement might be more specific in each case as that may depend on the emphasis of argument and the context of the measure. However, it would seem to the EC that due to the importance of the US argument on import licensing, the arguments relating to the import licensing agreement should be considered first. It would also seem correct to follow with the analysis under Article 4.2 of the Agreement on Agriculture as the case concerns a specific agricultural product. It is only after these agreements that the more general rules of the GATT should be examined although one could also put forward an argument that the TRIMs Agreement should be examined before the provisions of the GATT. In view of the very close link between the latter agreements this choice is perhaps more a matter of presentation than genuine specificity.

9. In this respect the EC would like to note that the third party intervention of China does not appear to take account of the systemic link between Articles III:4 and XI:1 of the GATT on the one hand and the TRIMs Agreement on the other hand. Although it is true that the TRIMs Agreement does not define exhaustively the notion of a trade related investment measure, it is clear that through the annex to the TRIMs Agreement certain specific TRIMs are considered *ipso jure* inconsistent with these provisions of the GATT. The EC also considers that as illustrated by the General Interpretative Note to Annex 1A of the WTO Agreement, and underlined by the Appellate Body in *Brazil – Desiccated Coconut*, the authors of the WTO regime intended to put an end to the fragmentation that had characterised the previous system.

10. Finally, should the Panel consider it necessary to examine in detail the TRQ system, the EC would like to point to the possibility that both Article III:4 and Article XI of the GATT might need to be examined at the same time. Some arguments presented in the written submissions suggest that depending on the emphasis of argument, the same measures might be considered both as border measures and internal measures.

Ms. Chairperson, distinguished members of the Panel,

11. In view of the disagreement on the facts of the case between the parties, the EC does not wish to make further observations on the matter before us today. However, since the Turkish TRQ system has been abolished, we feel that in any event there would not be a need to issue recommendations to the DSB on that side of the alleged Turkish measures.

ANNEX B-8

**ORAL STATEMENT BY KOREA
AT THE THIRD PARTY SESSION**
(9 November 2006)

Madame Chair and members of the Panel,

Thank for inviting Korea to present its views on this case. Korea would like to comment on the following four issues:

(i) whether there has been either a prohibition or a restriction on the import of rice in Turkey during the period of September 2003 to July 2006;

(ii) if the import of rice was either prohibited or restricted by the operation of a system of certificates of control, whether such certificates constitute import licenses;

(iii) whether imported rice has been less favourably treated by the requirement of domestic rice purchases; and

(iv) whether the requirement of domestic rice purchases constitutes a trade related investment measure.

First, before deciding whether the certificate of control is discretionary import license or not, Korea believes that the panel should decide whether importation of rice has been really prohibited or restricted. As Turkey pointed out, if there is no "*restriction*" or "*prohibition*", the nature of the "*measure*" is of no relevance.[1] If the statistics provided by Turkey in its annexes 8 and 20 are true, the US may be wrong in arguing that Turkey institutes or maintains a prohibition on imports through its failure to issue Certificates of Control[2], and that Turkey did not grant them at all for a period of over 2 1/2 years.[3] However, it seems imperative that the panel critically analyze this statistical information in order to decide whether the out-quota import of rice has been at least restricted or hampered by the way of managing the certificates of control. With respect to annex 8 which shows that out-quota imports amounted to 71,181 tons between January 2004 and August 2006, this annex does not demonstrate the out-quota imports were made each year, since the data in the Annex only shows the total imports throughout the above period, not a year by year picture. Korea believes that Turkey should be requested to provide yearly data on out-quota imports in order to prove their claim that out-quota import has never been restricted. With regard to annex 20, the disproportionate number of certificates for out-quota imports should be explained by Turkey in order to avoid the suspicion that the issuance of out-quota certificates have been deliberately controlled. Since Turkey argued that the Certificates are issued automatically within a matter of days, it needs to be confirmed that similar approval rates and processing times have been applied equally on both in-quota and out-quota certificate applications. Korea notices that the proportion of out-quota certificates to in-quota certificates in 2006 is much higher than it is for the years 2004 and 2005. An explanation for this should be sought so as to avoid the assumption that Turkey loosened its grip on out-quota certificates only after having been challenged in the WTO. With all those critical queries, the panel should decide whether out-quota imports have been de facto restricted, if not totally prohibited.

[1] Turkey submission para. 69.
[2] US submission para. 58
[3] US submission para. 71

Second, on the question of whether certificates of control could be import licenses, Korea is of the view that a licensing requirement should be distinguished from a license itself. As the US rightly defined, a license is a formal, usually printed or written, permission from an authority to do something.[4] Korea believes that all licenses, as long as they carry the word "license", must have explicit permission of acts to be licensed. On the bottom of the certificate of control form submitted by Turkey as annex 4, it is written that the [i]mportation of the related Commodity has been found to be proper, provided that said commodity is found to be proper and satisfactory in terms of human health and safety, etc. It is also mentioned that [t]he present Certificate of Control has been issued … for presentation to the relevant customs office. Korea is sceptical that such an expression could be interpreted as a formal permission of importation. It seems more appropriate to view the certificate as one of the licensing requirements, rather than a license itself. It should also be noted that an import license is issued separately in the in-quota importation of rice in Turkey after reviewing the certificates, whereas no license is granted in the case of an out-quota importation which also requests the certificates. The mere absence of a license does not convert a license requirement into a license itself. However, Korea recognizes the possibility that rice importation in Turkey could be effectively restricted by manipulation of the Certificates of control. If the panel found that the importation has been so restricted by Turkey, the way of managing the Certificates has to be condemned as a violation of Article XI:1 of GATT.

Third, when it comes to the issue of less favorable treatment caused by the domestic purchase requirement, Korea simply does not understand Turkey's logic that the import price of rice per ton was lower due to the domestic purchase requirement than it otherwise would have been in the absence of such a requirement. No matter how much the cost of buying domestic rice was lowered by virtue of the so called domestic purchase requirement, it can not be denied that importers had to resource additional funds to purchase domestic rice, and foreign rice could be imported more if such funds were not forced to be used to buy domestic rice. The main focus in this issue is not the price of domestic rice but the additional obligation imposed on the importers.

Fourth, Korea believes that the measure at issue has to be a trade related investment measure in order for the TRIMs Agreement to be applied. Even though there is no legal definition for trade related investment measures, it seems clear that the measure ought to have at least two elements, one is trade and the other is an investment element. The domestic purchase requirement at hand clearly possesses a trade aspect because the requirement is imposed on the importation of foreign rice. However, there does not appear to be an investment element. As mentioned in the preamble of the TRIMs Agreement, WTO members desire to facilitate investment across international frontiers and to take into account the financial needs of developing country members. In this regard, the financial movement across the border can be understood as an essential element of any investment measure. If there is no investment aspect in the domestic purchase requirement of Turkey, it can not be an investment measure, therefore the TRIMs Agreement could not be applied.

Madame Chair

These are the comments that Korea wishes to be considered in your deliberation of the case at hand.

Thank you very much.

[4] US submission para. 60

ANNEX B-9

**ORAL STATEMENT BY THAILAND
AT THE THIRD PARTY SESSION**
(9 November 2006)

1. Madame Chair and Members of the Panel: Thailand appreciates the opportunity to participate in this proceeding and to present its views on this matter to the Panel today.

2. Thailand reserved its right to participate as a third party in this proceeding under Article 10.2 of the *Dispute Settlement Understanding* due to our systemic interest as one of the top global exporters of rice.

3. In general, Thailand recognizes the concerns set forth by the United States in its first written submission regarding the inconsistency of Turkey's rice tariff rate quota (TRQ) regime and domestic purchase requirement with its obligations under the *GATT 1994*, the *Agreement on Import Licensing Procedures*, the *Agreement on Agriculture*, and the *Agreement on Trade-Related Investment Measures* (TRIMs).[1]

4. We view in particular that Turkey's domestic purchase requirement is inconsistent with its obligations under Article III of the *GATT 1994* and the TRIMs Agreement. However, we will not make specific comments on these concerns today.

5. Instead, Thailand would like to raise an issue not discussed by the parties and other third parties to date, that is, the inconsistency of Turkey's rice TRQ regime with its obligations under Article II of the *GATT 1994* with respect to its Schedule of Concessions. Specifically, Article II:1(a) requires all WTO Members to accord to the commerce of other Members "treatment no less favourable" than that provided for in the relevant part of their annexed Schedules. In this proceeding, Turkey does not dispute that it has bound its MFN duty on rice imports at 45 per cent *ad valorem* in its Schedule, without any quantitative limitations.[2] However, according to the factual evidence submitted by the United States, the treatment actually accorded by Turkey under its TRQ regime is "less favourable" than that provided for in its Schedule. In fact, Turkey does not provide the treatment it has provided in its Schedule to all Members. Rather, Turkey restricts rice imports so that they may enter only in limited and unpredictable quantities (albeit at a tariff rate lower than 45 per cent), under a non-automatic import licensing regime, and only when coupled with the purchase of domestic rice quantitatively greater than the intended import amount.[3] Thailand therefore considers Turkey's TRQ regime to be inconsistent with its obligations under *GATT* Article II, in addition to its domestic purchase requirement being inconsistent with *GATT* Article III and the TRIMs Agreement.

6. In its defense, Turkey states that the measures relating to its TRQ regime, including the legislative framework and the domestic purchase requirement, are no longer in force.[4] As a result, Turkey has requested the Panel to refrain from making findings on these measures, or alternatively, if the Panel considers making such findings necessary, to not make recommendations to the Dispute Settlement Body (DSB).[5] In support of its request, Turkey refers to the Appellate Body Report in *United States – Import Measures on Certain Products from the European Communities*, which states

[1] First Written Submission of the United States, 20 September 2006.
[2] First Written Submission of Turkey, 11 October 2006.
[3] First Written Submission of the United States, paras. 41, 45 and 49.
[4] First Written Submission of Turkey, para. 136.
[5] *Ibid.* para. 139.

that the Panel erred in making recommendations to the DSB on a measure that the Panel had found to "no longer exist."[6]

7. Thailand considers that the Panel must examine the measures challenged by the United States in its request for the establishment of this Panel. There is consistent WTO jurisprudence stating that the relevant time to assess whether a measure is within a panel's terms of reference is the time at which the panel is established, which in this case is 17 March 2006.[7]

8. While Thailand welcomes Turkey's statement that the TRQ regime and coupled domestic purchase requirement are no longer in force, Thailand notes that the relevant measures may be re-introduced at any time in the future. As the United States has shown, Turkey has in the past instituted seasonal import bans,[8] and more recently, opened or applied the TRQ regime with the domestic purchase requirement intermittently throughout a span of one year.[9] Therefore, to preclude the possibility that Turkey may re-instigate these measures, Thailand is of the view that this Panel should make findings with respect to the inconsistency of Turkey's rice TRQ regime and domestic purchase requirement with its WTO obligations. The Panel in *European Communities – Measures Affecting the Approval and Marketing of Biotech Products* considered that making a finding to prevent a WTO-inconsistent measure from being re-introduced would help secure a positive solution to the dispute.[10]

9. Thailand hopes that these views will assist the Panel in considering the issues that have been brought before it. Again, we thank you for this opportunity to appear before you today.

[6] *Ibid*. para. 138.

[7] Panel Report, *India – Measures Affecting the Automotive Sector*, WT/DS146/R, WT/DS175/R and Corr.1, adopted 5 April 2002, para. 7.26, and Panel Report, *Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, WT/DS56/R, adopted 22 April 1998, paras. 6.7 and 6.11.

[8] First Written Submission of the United States, paras. 14 and 15.

[9] *Ibid*. para. 38.

[10] Panel Report, *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, WT/DS291/R, WT/DS292/R, and WT/DS293/R, circulated 29 September 2006, para. 7.1311.